BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2024

In the Matter of	)	
	)	CLOSING COMMENTS OF
PUBLIC UTILITY COMMISSION OF	)	NORTHWEST AND
OREGON,	)	INTERMOUNTAIN POWER
	)	PRODUCERS COALITION ON
INVESTIGATION INTO LONG-TERM	)	INVESTIGATION INTO LONG-TERM
DIRECT ACCESS PROGRAMS	)	DIRECT ACCESS PROGRAMS
	)	
	)	

The Northwest and Intermountain Power Producers Coalition ("**NIPPC**") respectfully provides these closing comments for Phase 1 of the Commission's investigation into long term direct access program.[1] NIPPC appreciates the opportunity to consider the perspectives of various parties set out in opening comments, and provides the following responsive observations on a limited range of topics.[2]

1. Provider of Last Resort Obligations

In its opening comments, Portland General Electric Company ("**PGE**") suggests that its obligation to act as provider of last resort ("**POLR**") justifies PGE acquiring sufficient capacity resources to "backstop" all direct access load to cover a scenario in which direct access customers return to utility service without notice, given perceived deficiencies in the availability of power that could be purchased in the market.[3] PacifiCorp raises a similar concern, stating that the availability of

[1] NIPPC filed its initial comments on March 16, 2020.

[2] In this opening phase, parties have been asked to provide their "perspective" on various policy and background issues related to Direct Access, with an opportunity to focus on more specific factual and legal matters in later phases of the proceeding with contested case procedures. As these comments just set forth parties' perspectives, NIPPC will not respond to every assertion with which it disagrees or may be contrary to NIPPC's own perspective on a topic. Failure to address a given issue or sub issue herein should not be taken as an indication that NIPPC agrees with the espoused position or that such issue or sub issue is not significant, and NIPPC reserves the right to take additional positions, and or respond to positions taken by others, regardless of whether addressed herein.

[3] PGE March 16, 2020 Opening Comments at pp. 9-11.

market purchases at "reasonable costs" remains a risk factor in assessments of resource adequacy region-wide.[4]

NIPPC submits that the concerns raised regarding the POLR obligations are overstated. The utilities are conjuring a circumstance that is unlikely to ever occur – a situation where (1) numerous direct access customers return to the utility system at once, without notice; and (2) a market disruption makes it impossible for the utility to acquire capacity in the market at any price. This unlikely scenario is being put forth to justify the over acquisition of capacity 'just in case,' while charging the costs back to direct access customers that do not need it, likely rendering the whole program uneconomic.

As the Commission is aware, the utilities have no obligation to provide service under its standard cost of service rate to a customer returning from direct access service until three years after that customer provides notice of its intent to return. This three-year notice provides the utilities with ample time to adjust their portfolios and provide service. If a customer seeks service from the utility prior to expiration of that three-year period, the customer can take emergency service for a period of time, at a rate that *already* reimburses the utility for supply of emergency default service and to cover the unpredictable nature of the service,[5] and then take the utility's "standard offer rate option" which is supposed to be "priced based on supply purchases ***made on a competitive basis from the wholesale market*** plus the transition credit or transition charge, if any, and all other unbundled costs of providing standard offer service."[6] To the extent a customer (other than a returning direct access customer) has elected the standard offer rate option in lieu of cost of service, it has done so with the knowledge that the rates will be set based on the competitive wholesale market, and has voluntarily elected to assume the risks if market rates increase. A standard offer rate also "must reflect the full costs of providing standard offer service"[7] and "must exclude electric company costs that are avoided when a consumer

[4] PacifiCorp Opening Comments at 5-6.

[5] *See* Order No. 01-777 (2001) at 39 (expressly finding that the 25 percent risk premium included in PGE's emergency default service includes the premium necessary to mitigate the risks to the PGE's system associated with supply of emergency default service and to cover the unpredictable nature of service under this rate.)

[6] *See* Section 860-038-0250 (2)(a)

[7] Id.

chooses to be served under the standard offer rate option."[8] As such, it is not appropriate to charge customers using direct access for the costs of standard offer service if they are not using that service.

Importantly, one of the fundamental premises underlying the utility concern about POLR for returning direct access customers appears to be a concern that such return could drive up power prices in the competitive market, but this premise is inaccurate. To the extent market distortions cause prices in the competitive wholesale market to spike, such disruption, and any cost impacts on existing standard service customers, likely would occur regardless of whether a given customer remains on direct access or has returned to the utility without much notice. Either way, whether a customer is still taking service through direct access or has returned to standard offer service, such customer will have the same demand for power – that demand does not change based on the entity from whom the customer purchases the power. Given that there would be no change in overall demand for power, the fact that a customer may return on short notice to the utility will have no impact on either the price or the availability of power and will have essentially no influence on the cost of supply purchases made on a competitive basis from the wholesale market. Conversely, a mass return of customers to utility service in the absence of wholesale market disruptions will not the leave the utility unable to supply the returning customers because the resources available just before the mass return will still be available. Suggestions to the contrary are a red herring.

Moreover, to the extent that a utility's interpretation of its POLR obligation can be shown to create a real concern that would drive the need for additional expenditures – and NIPPC submits they cannot – the Commission has clear statutory authority to impose reasonable terms and conditions related to a utility's POLR obligations with respect to returning direct access customers. [9] Clarification of a utility's POLR obligation would be a less costly and less intrusive means of to address the perceived concerns.

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[8] See Section 860-038-0250 (2)(d)

[9] 2017 ORS 757.622 ("The Public Utility Commission shall establish the terms and conditions for providing default electricity service for nonresidential electricity consumers in an emergency. The commission also shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances when the consumer is receiving electricity services through direct access and elects instead to receive such services through the default service. The terms and conditions for default service established by the commission shall provide for viable competition among electricity service suppliers.)

2. **CUB's concerns over funds related to SB 838 are misplaced**

In its opening comments, the Citizens Utility Board ("**CUB**") notes that Energy Trust of Oregon receives funding from both the public purpose fund established in SB 1149 as well as incremental funding related to SB 838, which provides funding for energy conservation and weatherization programs.[10] CUB further notes that large customers – customers with loads in excess of 1 aMW, do not contribute to the SB 838 funds. CUB implies that, because long term direct access customers have loads in excess of 1 aMW, such direct access customers are escaping cost responsibility as compared to customers taking service under a utility's cost of service tariff. This implication is simply untrue. The limits on funding collected under SB 838 applicable to a customer with loads in excess of 1 aMW apply regardless of whether it takes service under direct access or from the utility. While CUB may be displeased with the funding mechanism as adopted, this issue is unrelated to direct access policy and is not appropriate for consideration in this proceeding.

3. **Conclusion**

NIPPC greatly appreciates the Commission's willingness to undertake a comprehensive review of Oregon's long term direct access programs and appreciates the perspectives on direct access shared thus far by parties to this proceeding. The Oregon legislature has clearly mandated development of a competitive retail market structure for electricity and directed the Commission to eliminate barriers to development of that market. Over the past twenty years, Oregon has gradually moved closer toward a competitive retail market, but the market remains far from robust, and many regulatory impediments continue to hinder the marketplace. The system would benefit a great deal from improvements.

NIPPC submits that many of the concerns raised by the utilities and CUB exaggerate potential cost shifts and other impacts that the long term direct access programs may have on cost of service customers, and looks forward to the evidentiary stage of this proceeding where such claims and concerns would need to be quantified.

[10] See SB 838-C, Cost Recovery for Conservation Measures

Finally, NIPPC acknowledges that there is merit to consideration of whether and how direct access customers contribute to resource adequacy. However, NIPPC fundamentally disagrees with assertions that the utilities as balancing authorities are the only appropriate entities for provision of resource adequacy.[11] As noted in its Opening Comments, NIPPC does not take a position in this docket as to the precise form that resource adequacy requirements should take, but NIPPC contends that resource adequacy requirements must be well-defined and apply equally to all load serving entities, and that supply of resource adequacy should be done on a competitive basis.

Dated this 6th day of May 2020.

Respectfully submitted,

/Carl Fink/s

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[11] *See, e.g.*, PGE Opening comments at p. 11, et seq.