BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2024

In the Matter of ALLIANCE OF WESTERN ENERGY CONSUMERS, Petition for Investigation Into Long-Term Direct Access Programs.	NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION'S STRAW PROPOSAL

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC")[1] respectfully submits this Straw Proposal on direct access issues in accordance with the Administrative Law Judge Ruling.[2] This Straw Proposal indicates NIPPC's starting position, but NIPPC reserves the right to change its proposal or recommendations. Additionally, NIPPC has not formed a recommendation on every direct access issue and reserves the right to make new recommendations after review of other stakeholders' straw proposals.

The Oregon Public Utility Commission (the "Commission") has a statutory obligation to develop policies to eliminate barriers to the development of a competitive

---

1 NIPPC is a membership-based advocacy group representing electricity market participants in the Pacific Northwest. NIPPC members include independent power producers ("IPPs"), electricity service suppliers, and transmission companies. NIPPC's current member list can be found at http://nippc.org/about/members/.

2 Ruling at 1 (Jan. 23, 2024).

retail market between electricity service suppliers ("ESSs") and electric companies.[3] More than two decades after the direct access program was initiated, it is still subject to caps and constraints which unnecessarily keeps Portland General Electric Company's modestly successful program from expanding and has effectively prevented the meaningful ability for the vast majority of eligible customers in PacifiCorp's service territory to purchase power from ESSs.

In this and other dockets, NIPPC and its ESS members have worked diligently to address the concerns raised by other stakeholders and allow for program expansion. For example, NIPPC has supported imposition of appropriate resource adequacy requirements on the direct access program and has worked diligently towards the development of a fair regional program. Similarly, NIPPC supports the concept that ESSs should be required to meet the same renewable power goals as utilities, and the same carbon reduction goals as utilities. NIPPC also supports the concept that direct access customers bear their share of policy costs through a non-bypassable surcharge. If direct access customers are: 1) paying an appropriate share of reasonable non-bypassable charges; 2) paying applicable transition charges to compensate utilities for capacity purchased before the customer left the utility system; and 3) meeting resource adequacy

---

[3] *See* ORS 757.646 (1) ("The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market between electricity service suppliers and electric companies. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies and prohibit preferential treatment, or the appearance of such treatment, by the incumbent electric companies toward generation or market affiliates. …").

requirements, then there is no basis to maintain strict participation caps on the direct access programs.

NIPPC will address the following issues in its straw proposal and reserves the right to address other issues throughout the investigation.

- Preferential Curtailment: thresholds, critical infrastructure, new large load customers, caps on preferential curtailment, curtailment options, costs necessary to install system upgrades for preferential curtailment, curtailment elections, timeframe for curtailment, and demand response
- Thresholds for Customer Eligibility[4]
- Caps for Non-Curtailable Load, Cap Waivers, and Cap Recalculations
- Elections and Transition Charges
- Non-Bypassable Charges
- Returning Customers and Default Supply
- Resource Adequacy Alternative Compliance Options
- Election Window

II. NIPPC'S STRAW PROPOSAL

A. Preferential Curtailment

- Participation Threshold: All load eligible for direct access programs shall be eligible for direct access with preferential curtailment, without the need to

[4] NIPPC is proposing a standard long-term direct access program, large new load direct access program for customers with load greater than or equal to 10 aMW, and a midsize new load direct access program for customers with load between 5 aMW and 10 aMW.

establish a minimum size threshold. However, if the Commission determines that a minimum size threshold should be established, such threshold shall be no greater than the threshold applicable for a utility's demand response program, or some other reasonable initial minimum initial size.

- Critical Infrastructure: Critical Infrastructure load shall be eligible to participate in the preferential curtailment direct access program without limitation. However, at minimum, any critical infrastructure load that maintains back up power systems shall be deemed eligible from the outset, pending a determination by the Commission as to whether critical infrastructure load that does not otherwise maintain back up power systems shall be eligible.
- New Large Load Customers and Preferential Curtailment: Prospective large new load direct access customers shall be entitled to elect non-curtailable service upon completion of this investigation.
- Cap on Preferential Curtailment: There shall be no cap on direct access capacity subject to preferential curtailment provided such load meets any resource adequacy obligations, the customer contributes to non-bypassable charges, and the customer pays any applicable transition charges.
- Curtailment Options: Physical or contractual curtailment should be allowed.
    - Physical/electronic curtailment systems are in place that can be operated remotely by the utility such that load can be reduced by 95 percent within a time window to be established through this investigation, and the time window shall not be less than 15 minutes.

- Contractual curtailment shall be permitted provided that the customer demonstrates the ability to shed at least 95 percent of its load within a specified time frame, and with failure to do so subject to liquidated damages, with both the curtailment timeframe and the level of liquidated damages to be established through this investigation, and the level of liquidated damages shall not be more than twice the costs the electric company incurs as a direct result of the customer's failure to curtail. The time window shall not be less than 15 minutes.

- Costs Necessary to Install System Upgrades for Preferential Curtailment: An electric company must provide a timely, good-faith estimate of costs necessary to install system upgrades for preferential curtailment upon request, and all costs must be non-discriminatory, fair, just, and reasonable.
- Curtailment Elections: A customer should be entitled to make differing curtailment elections for different qualifying loads so that elections are load-specific, not customer-specific.
- Timeframe for Curtailment: A curtailable customer that returns to utility service without appropriate notice shall be subject to potential curtailment for a period equal to the remaining time for notice of return under a given utility's direct access program tariff; provided, nothing shall limit a curtailable customer's ability to return to direct access service, subject to all applicable time frames and fees.
- Demand Response: A curtailable customer will have the option, but not the obligation, to participate in demand response programs to be developed.

- Utility Liability When Making Curtailment Decisions: NIPPC looks forward to reviewing other parties' proposals on this issue.
- Standards for Demonstrating that Uncommitted Supply Is Unavailable Prior to Curtailment: NIPPC looks forward to reviewing other parties' proposals on this issue.

B. Thresholds for Customer Eligibility

- Discrepancy Between Utility's Direct Access Thresholds: The thresholds should be the same for each utility, absent specific policy and factual justifications for any differences.
- Direct Access Program Participation:
  - Standard Long-Tern Direct Access ("LTDA"): 100 kw (no aggregation required)
  - Large New Load Direct Access ("NLDA"): greater than or equal to 10 aMW
  - Midsize NLDA: between 5 aMW and 10 aMW

C. Program Caps for Non-Curtailable Load

- Standard LTDA:
  - No Presumption for a Cap: There should not be a presumptive basis for caps on LTDA if the customer bears its share of non-bypassable charges and transition fees and is subject to resource adequacy requirements. Any parties seeking to maintain a cap should justify the basis for the specific cap.

- <u>Temporary Cap Pending Resource Adequacy Implementation:</u> The current caps on LTDA shall remain in place pending development of appropriate resource adequacy requirements applicable to direct access customers in Docket No. AR 660 or this investigation if the Commission elects to investigate NIPPC's Capacity Backstop Charge or Request for Offers recommendation.
- <u>Incremental Cap Waiver for Individual ESSs Meeting Direct Access Resource Adequacy Requirements:</u> Pending final Commission action on resource adequacy in AR 660, an ESS that meets direct access resource adequacy requirements shall be eligible to serve incremental load over and above current direct access caps.
- <u>Initial and Periodic Cap Increases Once Resource Adequacy Requirements Are In Place:</u> Upon implementation of mandatory resource adequacy requirements for ESSs as determined by the Commission, the standard LTDA cap be increased by 50 percent above the current cap (including any incremental load pursuant to waivers for meeting resource adequacy requirements), and such cap be increased at a minimum by at least an additional 10% annually above the then-current cap unless the Commission finds that a party establishes a valid justification to suspend such an increase.
- Caps should not apply to behind-the-meter growth of a LTDA customer.

- Large NLDA:
    - Temporary Cap Pending Resource Adequacy Implementation: Caps on large NLDA shall increase by 50 percent pending implementation of the direct access resource adequacy requirements from AR 660. This increase reflects the fact that Large NLDA is paying a share of resource adequacy requirements through transition fees, as required by the Commission.
    - No cap once resource adequacy requirements are in place
- Midsize NLDA:
    - Temporary Cap Pending Resource Adequacy Implementation: Midsize NLDA cap equal to current Large NLDA Cap and increases thereafter by 10 percent per year.
    - No Cap on midsize NLDA once resource adequacy requirements are in place.
- Cap Waivers: Petitions to exceed the cap will be processed through a 90-day window, and/or in a manner that is at least as swift as the process for waiver of caps for utility voluntary renewable energy tariff programs with which direct access competes.
- Cap Recalculations: Caps should be recalculated each year, or another regular interval, to freeze or increase caps prior to the annual election window to determine availability under the cap. Available cap space for each program should be published on the utility web page.

D. Elections and Transitions

- Standard LTDA Transition Fees:
  - Five-year cap for charges.
  - No Consumer Opt-Out Charge (remove PacifiCorp's consumer opt-out charge for years six to ten).
  - Capacity credit to customers for freed up capacity that results in reduction of utility resource need.
  - Transition fees must reflect depreciation of assets over time.
  - Transition fees to flow from the utility to direct access providers as appropriate where direct access avoids or delays need for utility acquisition of capacity.
- Large NLDA Transition Fees:
  - No transition fees once resource adequacy requirements are in place.
- Midsize NLDA Transition Fees:
  - No transition fees for Midsize NLDA where customer informs utility at least 24 months in advance that it is not requesting utility service.
  - Transition fees no higher than 20 percent of otherwise applicable transition fees for standard LTDA.
  - Burden on the utility to demonstrate that it planned for midsize load.
- Transition Charges and Other Non-Bypassable Charges: NIPPC supports the Alliance of Western Energy Consumers' proposal as an alternative methodology for calculating and recovering transition charges and other non-bypassable charges.

E. Non-Bypassable Charges

- This issue has been resolved in principle with the adoption of rules in Docket No. AR 651 related to non-bypassable charges. NIPPC will review what charges other stakeholders propose to be non-bypassable and make recommendations after that review. In general, any program that direct access customers are ineligible to participate unless the charge is mandated by law or regulation should not be considered non-bypassable charges.
- Non-bypassable charges, other than those for which the legislature has mandated a collection procedure through the public purpose charge, should only be recovered through delivery charges, allocated to a direct access customer in the same manner and method as to a cost-of-service customer of similar size and load profile.

F. Returning Customers and Default Supply

- A utility's provider of last resort obligations for LTDA customers seeking to return to utility service for any reason on less than 3 years notice shall be limited to supplying power available on the market pursuant to a rate schedule to be developed by the utility that reflects the costs to the utility of serving the customer at market prices, including energy, capacity, renewable portfolio standard requirements, and remaining exit fees.
- <u>Duration a Returning Customer Can Remain on Default Supply:</u> Keep the current construct in which a customer is moved to standard offer service within five business days of the customer's initial purchase of emergency default service

without limiting the customer's ability to return to direct access and selecting an ESS.

G. Resource Adequacy

- Alternative Resource Adequacy Compliance Options:
  - Capacity Backstop Charge: Require utilities to offer a Capacity Backstop Charge to direct access customers as an alternative to compliance with the Western Resource Adequacy Program ("WRAP") or the state program. The Capacity Backstop Charge should be available on a per-customer basis as opposed to requiring the ESS's entire portfolio of customers to opt into the charge. The customers should have a reasonable opportunity to switch between the Capacity Backstop Charge and an ESS-supplied resource adequacy product, subject to appropriate notice to the ESS and the utility providing the backstop.
  - Request for Offers ("RFO"): Require utilities to issue an annual RFO from ESSs to buy the utility's excess capacity that meets the WRAP's definition of Qualifying Resources for use in WRAP's Forward Showing ("FS") and/or transmission rights meeting the WRAP's FS Transmission Requirement. The resources should include those available for any period within the upcoming two-year time horizon of the State Program's forward showing. The utility should issue its request for offers at least 90 days prior to the WRAP's November 1st deadline for the Summer Season FS, and the utility should provide final responses to any bidding ESSs at least 45 days before November 1st. If the public utility rejects such offers

from ESSs, the public utility must be prepared to justify the prudence of any subsequent sale of such excess capacity and transmission in a bilateral sale with another entity at a price less than the offers, if any, received from ESSs. Each year, the public utility must provide a backward-looking report to the Commission, subject to appropriate confidentiality provisions, describing whether the utility received any offers from ESSs in the past years, and if so, demonstrating that such capacity and transmission rights were not sold to other parties at a price less than such offers, or if such sales were made at a price lower than offers from ESS(s), explaining why such sales occurred.

- <u>Treatment of Direct Access Load for Resource Adequacy Compliance:</u> Incumbent utility will be the provider of resource adequacy to customers in the one-year and three-year direct access programs, and for the five-year program customers paying transition charges during the term of such transition charges.

H. Other Issues

- <u>Election Window:</u> The election window should be moved from November 15 to a date in September to allow an ESS to plan for new customers in its forward showing requirements if it will be required by the resource adequacy rules.
- <u>Return to Cost of Service at Conclusion of this Investigation:</u> Allow existing direct access customers a reasonable opportunity to provide notice they intend to return to cost-of-service after conclusion of this investigation once the customers know the implications of remaining on direct access. If a direct access customer

provides the notice to return, then the customer should be exempted from any new requirements from this investigation for the duration of the notice period.

III. CONCLUSION

NIPPC looks forward to discussing the various straw proposals.

Dated this 29th day of February 2024.

Respectfully submitted,

Sanger Law, PC

Irion Sanger

Irion A. Sanger
Ellie Hardwick
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, OR 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Attorneys for the Northwest & Intermountain Power Producers Coalition