

**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.

RULING

**DISPOSITION: MOTION TO ADOPT PROCEDURAL SCHEDULE GRANTED**

On February 18, 2020, Staff filed a motion with a parties' issues list and proposal requesting the adoption of a phased procedural schedule in this docket. Staff requests expedited consideration of the motion. Staff states it has conferred with other parties and no parties object to the motion.

In its motion, Staff states that following the December 12, 2019 Commission workshop, parties discussed a phased approach to this docket. The proposed parties' issues list and phasing proposal attached to the motion presents four phases. The parties recommend that Phase 1 be non-contested and provide for simultaneous initial and reply comment opportunities to discuss policy issues relevant to long-term direct access. Phase 2 would allow for briefing of legal issues related to statutory interpretation. A Commission order may be issued at the conclusion of this second phase to clarify contested legal issues. Phase 3 proposes several rounds of testimony, settlement conferences, and a hearing to discuss program structural design, cost-shifting issues, and potential limitations on customer participation. Phases 2 and 3 would be contested. Phase 4 would consist of rulemakings or other, additional proceedings based on the outcome of Phases 1 through 3.

For good cause shown, I adopt the parties' issues list and phasing proposal, with two modifications. First, the addition of the *cost of legislative requirements* should be added to the Phase 1 bullet-point list regarding other states' handling of consumer choice and wholesale market access. This topic should also be included as a part of parties' Phase 2 briefings. Second, upon the completion of Phase 2, the Phase 3 issues list will be revisited, prior to commencement, to consider any modifications for efficiency or clarity that may be necessary or desired.<sup>1</sup>

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<sup>1</sup> This modification may be considered an emphasis on the parties' proposal for a workshop/settlement conference to incorporate a Commission order following Phase 2, with the addition that whether or not an order is issued, a workshop/settlement conference will be held to consider any warranted changes to Phase 3 for the reasons noted above.

The following schedule for Phase 1 is adopted:

<b>EVENT</b>	<b>DATE</b>
All-Party Opening Comments	March 16, 2020
All-Party Closing Comments	April 6, 2020
Commissioner Workshop	TBD

Parties are requested to provide agreed-upon dates for Phase 2 as soon as practicable.

Dated this 20<sup>th</sup> day of February, 2020, at Salem, Oregon.



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Christopher J. Allwein  
Administrative Law Judge

Attachment: Parties' Issues List and Phasing Proposal

# UM 2024 – Parties’ Issues List and Phasing Proposal

## Phase 1: non-contested case phase

- Two rounds of simultaneous comments on each party’s perspective on the policy and background issues raised in Questions 1 and 6 from the agreed issues list, including:
  - What are the potential benefits and potential costs to customers from long-term direct access participation?
    - what are the potential cost shifts?
  - How are other states handling customer choice and access to wholesale markets for different customer classes (with a focus on other WECC states, per Commissioner Tawney’s request)?
    - Issues including:
      - provider of last resort obligations
      - price disclosure
      - data disclosure
      - general enforcement authority
      - pricing of departing load
      - market design and alignment with customer choice
      - oversight, compliance and reliability responsibilities
      - capacity and reliability
    - What has worked well and what hasn’t?
    - How can these findings be applied to Oregon, including consideration of the fact that Oregon’s direct access market is limited to non-residential customers?
  - Resource adequacy
    - what is it?
    - how is it provided?
    - what regulatory requirements or market structures are used in other states with direct access to ensure resource adequacy?
    - why is it important or not important?
    - issues that may/should be considered in the contested case phase
- Commission workshop following comments
- Potential settlement conference to narrow the issues, if possible.

## Phase 2: contested case phase – legal briefing

- Two rounds of simultaneous legal briefing on applicable legal requirements and Commission authority on legal issues related to direct access, including:
  - the meaning of “unwarranted” in ORS 757.607(1) and the Commission’s discretion to interpret this term;
  - the Commission’s oversight authority over electricity service suppliers and/or direct access customers, including its ability, if any, to impose resource adequacy requirements on ESSs or otherwise ensure that all direct access customers are obtaining a Commission-established level of resource adequacy service from either the incumbent utility or an ESS;
  - the Commission’s authority over provider of last resort obligations;
  - the Commission’s role in ensuring a competitive market place, including whether the direct access statute requires the Commission to allow customers to choose from whom to purchase resource adequacy/capacity services;
  - the legal requirements applicable to utilities in planning for load and resource adequacy; and

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- the Commission’s authority to approve rates for resource adequacy provided by utilities.
- Commission order, if necessary, to resolve any disagreements among the parties with respect to the legal issues raised in this phase.

### Phase 3: contested case phase – testimony

- workshop/settlement conference prior to testimony to incorporate Commission order
- Three rounds of simultaneous opening and rebuttal testimony on the following:
  - Regarding potential benefits and costs of direct access programs:
    - How should long-term direct access programs be structured to maximize these potential benefits?
    - How should long-term direct access programs be structured to minimize or eliminate these potential costs?
  - What cost shifts occur when load departs a utility?
    - What constitutes “unwarranted” cost-shifting?
      - Are PGE’s and PacifiCorp’s current long-term direct access programs structured in a way that avoids unwarranted cost-shifting? Topics may include:
        - transition adjustments and the potential for capacity credits or capacity charges
        - consumer opt-out charge
        - resource intermittency
        - freed up RECs
        - legislative mandates (state and federal) and the bypassability of costs
        - load growth
        - return-to-cost-of-service restrictions
        - resource adequacy
      - if not, how should these programs be structured to avoid unwarranted cost-shifting?
  - What limits, if any, should be placed on the ability of a customer to participate in a long-term direct access program? Including:
    - caps
    - notice requirements
      - election windows
      - return notice
      - energization notice/timing
    - customer size requirements
  - How should load serving entities plan in the short and long-term for direct access and all jurisdictional load to ensure resource adequacy?
  - Are current rules, regulations and other programs recognizing the current state of wholesale power markets while preserving and protecting those markets?
    - Commission’s role in removing barriers to a competitive marketplace.
- Settlement conferences after each round of testimony
- Hearing
- Simultaneous opening and closing briefs on issues raised in the contested phase, and incorporating policy issues raised in phase 1.

## **UM 2024 – Parties’ Issues List and Phasing Proposal**

Phase 4: rulemakings or other additional proceedings necessary to effectuate the Commission’s decision(s).