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August 24, 2020

## *Via Electronic Filing*

Oregon Public Utility Commission  
201 High Street SE, Suite 100  
Salem, OR 97301

*Re: August 25, 2020 Public Meeting Regular Agenda Item #2 – UE 358*

Dear Commissioners:

The Alliance of Western Energy Consumers (“AWEC”) appreciates the opportunity to file comments on Portland General Electric Company’s (“PGE”) queue management plan and the Oregon Public Utility Commission (“Commission”) Staff Report addressing criteria for a waiver of the New Load Direct Access (“NLDA”) participation cap. Subject to the concerns discussed more thoroughly below with regard to the participation cap, AWEC largely does not oppose the queue management plan PGE proposes to include in Schedule 689. The exception to this is the requirement that customers energize their facilities within one year following the one-year notice period. The eligibility of nearly all of the customers in PGE’s queue remains in doubt at this point, and AWEC recommends that the one-year energization requirement for any such customer – now or in the future – be measured from the date the customer is determined to be eligible to participate in the program.

The Staff Report also identifies certain criteria a customer seeking a waiver of the NLDA participation cap should meet to justify a waiver. AWEC believes, however, that the Staff memo addresses the wrong question at least with respect to the customers who were first to join the queue.

Initially, AWEC takes exception to how the conversation around the New Load Direct Access (“NLDA”) program has evolved since it was implemented in AR 614. In approving the creation of this program and rules governing it, the Commission necessarily determined that a NLDA program in Oregon is in the public interest. Thus, participation in this program, consistent with the approved rules, should be encouraged as furthering the public interest. Yet, discussions of the NLDA program recently have focused not on the potential benefits of the program, but on the potential harms. To be clear, AWEC does not deny that there are potential harms from a NLDA program, just as there are potential harms from any program; but in considering these potential harms and mechanisms to mitigate them, it is worth

remembering why the Commission adopted this program in the first place. As the Staff memo the Commission adopted when it determined to create a NLDA program concludes:

“A NLDA program may have the following benefits:

- Economies of scale for utility administrative and distribution costs;
- Reduce utility load growth and need to add generation resources or replace coal resources;
- Reduce future average system cost by avoiding new resources;
- Reduce average system cost by sharing option value of NLDA with cost of service (COS) customers;
- Develop the competitive generation market; and
- Increase efficiency of regulated generation through competitive pressure.”<sup>1/</sup>

With these benefits in mind, and the overall public interest of the NLDA program, AWEC believes there is a distinction to be made between the waiver requests of customers currently in PGE’s queue, when there is no current NLDA participation, and subsequent waiver requests when the participation cap on the program has unequivocally been reached. For the latter, it may reasonable to require a high bar for customers to participate in the program, as Staff’s proposed waiver conditions would undoubtedly create. For the former, it is not.

The primary reason customers currently in the NLDA queue must request a waiver of the participation cap is due to PGE’s decision to use distribution capacity to measure a customer’s contribution toward this cap. In Order 20-002 in UE 358, the Commission accepted PGE’s proposal to apply load toward the participation cap based on distribution facility plans, but also recognized “a need for flexibility.”<sup>2/</sup> The Commission allowed PGE and the customer to attempt to negotiate an alternative load measurement, and also stated that the Commission would be available to resolve disputes if PGE and the customer could not agree.<sup>3/</sup>

Consequently, for the customers that are high up in the queue and have filed waiver requests to preserve their position in this queue, the issue not primarily whether they should be granted a waiver of the cap, but whether their load should be measured differently from their distribution facility capacity. The latter issue is not a question of whether a customer should be allowed to exceed the cap; it is a question of whether the customer should be considered eligible to participate within the existing cap.

Given that customers are requesting waivers from the Commission, it is apparent that PGE and these customers have not agreed to an alternative measurement of their loads and that PGE continues to insist on using distribution facility capacity. AWEC has serious concerns with this approach. For one, because distribution capacity is generally designed to meet the maximum potential load of a facility, it is unlikely the facility will reach this threshold in the near term and, indeed, the facility may never reach this threshold. Based on PGE’s filed comments for the public meeting, it appears that PGE is not only using distribution system

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<sup>1/</sup> Docket AR 614, Order No. 18-031, Appen. A at 4 (Jan. 30, 2018).

<sup>2/</sup> Docket UE 358, Order No. 20-002 at 19 (Jan. 7, 2020).

<sup>3/</sup> Id.

capacity, but to convert this capacity measurement to an energy measurement, is also assuming that these customers have load factors of 100%, a load factor no customer has.<sup>4/</sup>

Further, PGE's approach may unfairly invalidate a customer from participating in the NLDA program in favor of a customer that applies to this program later. This would happen because Schedule 689 allows a participating customer to reserve its maximum potential load against the cap (measured by distribution capacity) for five years, after which point PGE will apply the customer's actual load against the cap. Thus, if after five years this customer's contribution toward the cap is reduced, the next customer in the queue may have lost its opportunity to participate because it had to energize its operations, even though there was sufficient room in the program all along.

Additionally, for some customers in the queue, PGE's use of distribution capacity invalidates them at the outset from participation in the NLDA program because they are assumed to be larger than the entire program availability of 119 aMWs. This effectively imposes disparate, discriminatory, treatment on such a customer because it would be required to meet whatever additional conditions the Commission imposes for granting a waiver of the participation cap even if such a customer were first in the queue.

Thus, for the customers who occupy a high position in PGE's queue – those who expressed an interest in participating in the NLDA program within seconds of its opening – the question should not be what additional conditions these customers should be required to meet to exceed the participation cap, but whether their actual loads are likely to exceed the cap at all. To the extent that they are collectively participating at a load below the participation cap, then it is in the public interest for them to participate in the NLDA program so long as they are complying with all program requirements as reflected in the NLDA rules and PGE's approved tariffs. Additional commitments are unnecessary and unwarranted.

As PGE notes, when it opened the queue, four customers joined it immediately and essentially simultaneously.<sup>5/</sup> One of these customers has already energized its operations and is pursuing a separate waiver request of the NLDA rules.<sup>6/</sup> Given this customer's unique circumstances, it may be that its waiver request must be considered separately. For the other three, however, AWEC recommends that the Commission allow each of these customers to participate in the NLDA program without any additional commitments or requirements. As noted above, there is no certainty that these customers, individually or collectively, will fill the NLDA program in the first five years or thereafter. In the face of this uncertainty, the default should be to allow these customers to participate as, again, doing so is in the public interest.

AWEC's recommendation avoids the need to address several complicated issues. First, the Commission need not address the equity issue of allowing one customer to participate in the NLDA program and not another simply because the former entered the queue a matter of

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<sup>4/</sup> UE 358, PGE Comments at 2 (Aug. 18, 2020) (noting that NLDA customer load factor currently is unknown, thus justifying use of distribution system capacity).

<sup>5/</sup> Id.

<sup>6/</sup> Willamette Falls Paper Co. v. PGE, Docket UM 2107.

seconds earlier. PGE's Comments admit that, under its preferred framework, "[t]hose few seconds of difference between their submittals had consequence," but it does not attempt to defend this consequence from an equitable or public interest perspective.<sup>7/</sup> Second, a customer that is high enough in the queue and whose distribution facility capacity is low enough to allow it to participate in the NDLA program without seeking a waiver has no incentive to argue that its actual load should be lower for purposes of measuring it against the cap. The amount of load assumed for this customer, however, may be dispositive in whether sufficient room remains under the cap to allow the next customer to participate. In that circumstance, it seems only fair that this next customer should be allowed to argue for a lower load attributable to the customer before it, but depending on the evidentiary demonstration the Commission requires, this would potentially necessitate giving the later customer access to the earlier customer's commercially sensitive load data.

If the Commission is uncomfortable with unconditionally approving NLDA participation for the customers highest in the queue, then as an alternative, the Commission could consider allowing participation provisionally for five years. After this time, if a customer's load exceeds the cap, the Commission could evaluate whether this circumstance has caused harm to cost-of-service customers and options to remedy that harm, including placing this customer on a cost-of-service rate. In addition to allowing the Commission to identify whether the participation cap has actually been reached, the other benefit to this approach is that it would provide additional time for overlapping issues to be resolved in UM 2024, which could then inform whether a more permanent waiver for these customers is warranted.

As a third option, the Commission could evaluate the eligibility of these initial customers based on an alternative, objective measurement of expected load. PGE may, and likely does, have minimum load agreements with each of these customers that require these customers to reach a certain load by a certain date in order to justify the investment PGE has made in new distribution facilities to serve these customers. The load in the minimum load agreement could be the means of measuring these customers' contributions toward the participation cap.

AWEC's recommendations are driven by its objective of furthering the public interest, and the specific interest of large customers, through development of an effective NLDA program. It is bad policy and nonsensical to go through the process of creating a new program only to then erect barriers that largely preclude customer participation in it, which is precisely what PGE's use of distribution capacity and Staff's recommended waiver conditions would do. Having approved the NLDA program through a robust investigation and rulemaking process, the Commission should be focused on how it can encourage and deliver enrollment in this program, not how it can discourage and prevent it.

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<sup>7/</sup> PGE Comments at 2.

Dated this 24th day of August, 2020.

Respectfully submitted,

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