

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 651

In the Matter of

Rulemaking Regarding Direct Access Including
2021 HB 2021 Requirements.

**PORTLAND GENERAL ELECTRIC
COMMENTS ON DIRECT ACCESS
RULEMAKING (AR 651)**

INTRODUCTION

Portland General Electric Company (PGE) submits these comments in AR 651 *Rulemaking Regarding Direct Access Including HB (House Bill) 2021 Requirements* in response to the Notice of Proposed Rulemaking Hearing with Statement of Need and Fiscal Impact and Proposed Rules (Notice) filed with Secretary of State on February 24, 2023, and served to the AR 651 service list by Public Utility Commission of Oregon (Commission or OPUC) Staff on February 27, 2023.¹ PGE's comments:

- discuss our general support for the proposed addition of Oregon Administrative Rule (OAR) 860-038-0170 on non-bypassable charges;
- articulate our concerns about preferential curtailment as a solution to provider of last resort (POLR) risk, clarifying PGE's role as POLR, advocating for caps on all direct access programs, expressing concerns around disconnecting critical facilities, and outlining specific preferential curtailment issues that will likely need to be determined as part of a fact-based contested case proceeding;
- provide general support to the proposed changes to OAR 860-038-0300 on energy supply mix labeling requirements;
- articulate our concerns with allowing electricity service suppliers (ESSs) to escape regulation until 2027 to file their first forward-looking emissions planning reports; and
- provide redlines to the proposed rules after concluding remarks.

PGE looks forward to further discussions at the Rulemaking Hearing on April 4th, 2023.

¹ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

I. OAR 860-038-005 Definitions for Direct Access Regulation

The Rule Summary states the amendments to Oregon Administrative Rule (OAR) 860-038-005 “[...] adds definition for ‘Preferential Curtailment’, deletes unnecessary definitions, arranges the definitions alphabetically, and renumbers the rule provisions.”²

OAR 860-038-005(42) proposes defining uncommitted supply as “generation reasonably available to the electric company in the market or through the electric company's own resources. Uncommitted Supply excludes any generation needed to meet the electric company's firm load service obligations, anticipated near-term load obligations, contractual obligations, federal reliability standards.”³ Proposed rule OAR 869-038-0280(9) then uses this definition of uncommitted supply to define the conditions under which a returning preferentially curtailable direct access customer can be served: “[i]f a preferentially curtailable consumer returns to default supply without providing the required time for notice of return under the electric company's direct access program tariff, the electric company must make best efforts to serve the consumer with Uncommitted Supply.”⁴ PGE has previously stated that that the definition of “uncommitted supply” and “best efforts” are likely to be fact-based issues that need to be explored as part of a contested case proceeding as both these terms have technical underpinnings that cannot necessarily be captured as part of a rulemaking.⁵ Furthermore, PGE still supports consideration of a readily available definition of energy scarcity provided in the North American Electric Reliability Corporation’s (NERC) description of the Energy Emergency Alert (EEA) levels used to communicate the condition of a Balancing Authority experiencing an energy emergency.⁶

II. OAR 860-038-0170 Non-Bypassable Charges

PGE supports the proposed rule language on non-bypassable charges. The Rule Summary states OAR 860-038-0170 “[...] articulates criteria used in Commission determinations on whether a charge should be able to be bypassed as a result of taking Direct Access service.”⁷ This proposed rule builds upon Staff’s September 1, 2022 proposal which was based on language circulated as part of Staff’s Report for the July 7, 2022, Public Meeting, and incorporates certain revisions shared with the AR 651 service list from NIPPC and the Citizens’ Utility Board (CUB) (circulated August 5, 2022), the Alliance for Western Energy Consumers (AWEC) (August 22, 2022), and

² AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, p3, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

³ *Id.* p6.

⁴ *Id.* p9.

⁵ AR 651, PGE’s Comments on Staff’s Updated Preferential Curtailment Proposal, pp8-9, February 3, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac163051.pdf>

⁶ NERC, EOP-011-1 Emergency Operations Attachment 1 Energy Emergency Alerts, pp 11-12, <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf>

⁷ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, p9, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

the Joint Utilities (August 25, 2022). PGE appreciates Staff’s collation of stakeholders’ suggestions and agrees that the proposed language, “provides clearer criteria to guide contested case determinations and puts clear boundaries around the arguments that can be made about non-bypassability but does not overly restrict consideration of fairness on a cost-by-cost basis.”⁸ PGE also welcomes the addition of “and prevent unwarranted cost shifting” to the criteria the Commission shall consider in determining whether a cost is appropriate for recovery as a non-bypassable charge.⁹

III. OAR 860-038-0290 Preferential Curtailment

PGE remains committed to ameliorating provider of last resort (POLR) risk but continues to have strong concerns about the use of preferential curtailment as a potential tool: moral concerns regarding the potential disconnection of critical infrastructure such as hospitals, and economic concerns relating to disconnecting industries that could have state-wide financial impacts. The Rule Summary states that the proposed rule OAR 860-038-0290 “[...] directs utilities to curtail returning customers on emergency default service in specific scenarios.”¹⁰ The proposed rules go on to state that:

“If a preferentially curtailable consumer returns to default supply without providing the required notice of return under the electric company’s direct access program tariff, the electric company must make best efforts to serve the consumer with Uncommitted Supply”¹¹

and

“A preferentially curtailable consumer that returns to the electric company's service without the required notice of return under the electric company’s direct access program tariff shall be subject to potential curtailment for a period equal to the remaining time for notice of return.”¹²

PGE’s position¹³ has been that POLR risk stems from a utility having to provide emergency default supply (for up to five days) at less than five business days’ notice given that integrated resource plan (IRP) Guideline 9 prohibits PGE from planning to ensure capacity is held for such

⁸ AR 651, Staff’s Straw Proposal at 1, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah164623.pdf>

⁹ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, OAR 860-038-0170(1)(e), p8, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

¹⁰ *Id.* p9.

¹¹ *Id.*

¹² *Id.*

¹³ AR 651, PGE Comments on Staff’s Straw Proposal, pp9-10, February 14, 2022

a scenario.¹⁴ Staff’s proposed rules assume that the root cause of POLR risk is a direct access customer returning to default supply before the customer has served the required notice to return to cost-of-service. Staff’s proposed framework therefore extends the consideration of POLR risk from the current five days of emergency default service to two or three years. Staff’s proposal would require a preferentially curtailable direct access customer on default service be subject to potential disconnection for a period equal to its remaining time for notice of return (assuming the customer has submitted such a binding notice). Customers enrolled in long-term direct access (minimum five-year option) must provide at least two years notice to return to cost-of-service if they elected the service in 2013 or earlier (Enrollment Periods A-L), or three years notice if enrolling from 2014 (Enrollment Period M onwards).¹⁵ Staff therefore extends the considerations of POLR risk considerably. As PGE has previously discussed, the duration that a preferentially curtailable direct access customer is exposed to potential preferential curtailment risk should be explored as part of a contested case proceeding.¹⁶

For context, OAR 860-038-0280 describes the two types of “default supply”: “emergency as defined in OAR 860-038-0005 and standard offer as defined in OAR 860-038-0250.”¹⁷ Emergency default service is then defined as “a service option provided by an electric company to a nonresidential consumer that requires less than five business days’ notice by the consumer or its electricity service supplier.”¹⁸ The standard offer is defined as “the non-emergency default supply option” which is “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 provide standard offer of service.”¹⁹

To provide further context for our response to these proposed rules, PGE will describe: how PGE acts as POLR through the provision of emergency default service; concerns with potentially

¹⁴ IRP Guideline 9 states: “[a]n electric utility’s load-resource balance should exclude customer loads that are effectively committed to service by an alternative electricity supplier.” Public Utility Commission of Oregon. “Order 07-002.” UM 1056. Public Utility Commission of Oregon. 8 Jan 2007, at 19, available at: <https://apps.puc.state.or.us/orders/2007ords/07-002.pdf>

¹⁵ For example, PGE Schedule 485, Large Nonresidential Cost-of-service Opt-Out (201-4,000kW), Effective for Service on or after January 2023, available at: https://assets.ctfassets.net/416ywc1laqmd/1TbkHDFrg0Z8OR6FeMsagH/4472b0023ccbdb09fc64a5ba41518b54/Sc hed_485.pdf

¹⁶ AR 651, PGE, Comments on Staff’s Straw Proposal, February 14, 2022, p 4, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac142445.pdf>

¹⁷ OAR 860-038-0280(1)-(2), available at: https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=qZKFqkzPyrv9MuNT7X0vLTJI_IzfdnpCRX8TTbHSyC3CN1huSAIr!-348175955?selectedDivision=4052

¹⁸ OAR 860-038-005(26), available at: https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=qZKFqkzPyrv9MuNT7X0vLTJI_IzfdnpCRX8TTbHSyC3CN1huSAIr!-348175955?selectedDivision=4052

¹⁹ OAR 860-038-0250(1)-(2)(a) available at: https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=qZKFqkzPyrv9MuNT7X0vLTJI_IzfdnpCRX8TTbHSyC3CN1huSAIr!-348175955?selectedDivision=4052

curtailing critical facilities; the need for caps on both curtailable and non-curtailable load, and issues that will likely be resolved by the Commission as part of a contested case proceeding.

1. PGE acts as POLR through the provision of Emergency Default Service.

PGE has noted²⁰ that it currently effectuates POLR requirements by providing emergency default service to direct access customers that give less than five business days' notice that they need to take advantage of PGE's default supply option (potentially due to long-term ESS failure).²¹ The customer on emergency default service is then moved on to the default standard offer (PGE's "daily market rate") or chooses to return to direct access within an additional five days.

In response to HB 3633 (2001) PGE designed emergency default service to "provide back-up service for any direct-access customer that loses its ESS and has not provided PGE with the notice required to receive service under the applicable standard offer service rate."²² PGE proposed to provide this back-up service on an "as available" basis to "prevent a returning direct access customer from causing PGE to curtail service to other customers who did not go to direct access [...] other customers should not be required to suffer rolling outages to provide emergency default service or pay for standby resources for direct access customers."²³ Staff noted at the time that "[b]ecause PGE remains the [de facto] *provider of last resort* within its service territory [...] the company is obligated to provide safe and adequate service to all customers within its service area" [emphasis added].²⁴ The Commission resolved that "customers who choose direct access should not be limited to default service on an "as available" basis."²⁵ Early in the informal rulemaking phase, PGE welcomed Staff's proposal that emergency default service "shall be designed to mitigate or avoid cost shifting" and we still see this as a key component of addressing POLR risk.²⁶

2. Caps are necessary for both non-curtailable and curtailable direct access customers.

Staff's proposed rules would create two types of direct access customers categorized by how they are treated in order to ameliorate utility POLR risk: curtailable and non-curtailable.²⁷ While the

²⁰ AR 651, PGE, Comments on Staff's Straw Proposal, February 14, 2022, p 9, available at:

<https://edocs.puc.state.or.us/efdocs/HAC/ar651hac142445.pdf>

²¹ PGE currently effectuates POLR per [Schedule 81](#) (Nonresidential Emergency Default Service): a direct access customer no longer receiving service from its ESS and returning to PGE without the required notice is charged 125% of ICE-Mid-Columbia (Mid-C) Firm Index plus 0.306 cents per kWh for wheeling, plus line losses. After five business days (or before) the customer is moved to PGE's standard offering (daily market pricing) and has the option of seeking a new ESS.

²² UM 115, Order No. 01-777 p38, issued August 31, 2001, available at:

<https://apps.puc.state.or.us/orders/2001ords/01-777.pdf>

²³ *Id.* pp38-39.

²⁴ *Id.* p39.

²⁵ *Id.*

²⁶ AR 651, INFORMAL PHASE: Staff's Announcement for the January 26, 2022 Workshop, January 12, 2022, p 3 retrieved from <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah152631.pdf> p3

²⁷ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, 860-038-0290(3), p9, Filed February 24, 2023, available at:

<https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

proposed rules state that “[t]he Commission will establish a cap on non-curtable direct access load to protect cost-of-service customers from the risks and costs associated with direct access consumers’ return to an electric company’s system” the proposed rules remain silent on a cap for curtable customers.²⁸ Caps remain an essential tool to help mitigate the potential for cost shifting and unplanned load shifts as they place limits on “unknown and unknowable” system impacts, and must be in place for both curtable and non-curtable direct access customers.²⁹ Even if preferential curtailment were operationalized, a cap on curtable customers would be necessary to limit the amount of load that could return on short notice to emergency default service.³⁰

Furthermore, POLR is but one of many risks associated with the direct access program that have been investigated since the start of UM 2024 in 2019.³¹ A reduction in POLR risk does not mean the direct access program is risk-free. For example, the Commission (UM 2143) and the region (through the Western Power Pool – Western Resource Adequacy Program) continue to work to resolve resource adequacy issues while decarbonizing the system in line with state policy goals.³² ³³ It is imperative that direct access program caps remain in place. All load serving entities under the Commission’s jurisdiction - electricity service suppliers (ESSs) and investor-owned utilities (IOUs) - need to demonstrate they are planning to have adequate resources – generation, transmission, efficiency measures, and demand-side measures – to serve loads across a wide range of conditions with a sufficient degree of reliability while meeting state greenhouse gas reduction requirements.³⁴

3. PGE should not be put in the position of preferentially curtailing critical facilities.

PGE continues to have concerns with allowing critical facilities the option of installing preferential curtailment infrastructure.³⁵ Staff has previously attempted to assuage PGE’s

²⁸ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, 860-038-0290(7), p9, Filed February 24, 2023, available at:

<https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

²⁹ UE 335, Order No. 19-128, available at: <https://apps.puc.state.or.us/orders/2019ords/19-128.pdf>

³⁰ PGE currently effectuates POLR per [Schedule 81](#) (Nonresidential Emergency Default Service): a direct access customer no longer receiving service from its ESS and returning to PGE without the required notice is charged 125% of ICE-Mid-Columbia (Mid-C) Firm Index plus 0.306 cents per kWh for wheeling, plus line losses. After five business days (or before) the customer is moved to PGE’s standard offering (daily market pricing) and has the option of seeking a new ESS.

³¹ UM 2024, OPUC, Scoping Docket and Proposed Issues List, December 3, 2019, available at:

<https://edocs.puc.state.or.us/efdocs/HAK/um2024hak145357.pdf>

³² UM 2143, Investigation into Resource Adequacy in the State,

<https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=22698>

³³ (N)WPP Resource Adequacy Program – Detailed Design, p 140, July 2021, available at:

https://www.westernpowerpool.org/private-media/documents/2021-08-30_NWPP_RA_2B_Design_v4_final.pdf

³⁴ See AR 651, PGE, Comments on Staff’s Division 38 Direct Access Straw Proposal, p7, September 15, 2022, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac161242.pdf>

³⁵ AR 651, PGE’s Comments on Staff’s Updated Preferential Curtailment Proposal, p6, February 3, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac163051.pdf>

concerns by explaining that “a hospital is required to have emergency power facilities that are tested monthly” and “health facilities focus on thorough emergency preparedness plans for disasters to ensure emergency power will be available.”³⁶ PGE acknowledges that critical facilities should have heightened emergency preparedness, but it is a different question – and a moral one – whether PGE should be required to disconnect a critical facility in an energy emergency to protect the supply of cost-of-service customers due to the failure of an ESS.

PGE’s current Short Term Curtailment Operating Plan contains the steps for implementing rotating outages (“emergency curtailment”) to protect the “performance, integrity, or stability” of the electrical system in an energy emergency, but PGE excludes “[f]acilities deemed necessary to public health, safety, and welfare” from the rotating outage.^{37,38} To the extent rules go forward allowing critical facilities to adopt the risk of being preferentially curtailed, PGE recommends there should be strict conditions around the demonstration of sufficient back-up generation.

4. Preferential curtailment contested case determinations.

The proposed rules (OAR 860-038-2090) indicate that certain preferential curtailment issues should be determined by the Commission.

“(7) *The Commission will establish a cap on non-curtailable direct access load to protect cost-of-service customers from the risks and costs associated with direct access consumers’ return to an electric company’s system.*

(8) *Using a Commission approved methodology, an electric company may collect a reasonable charge from a direct access consumer to recover necessary costs for system upgrades that operationalize preferential curtailment of that consumer [...]*

(10) *The Commission will establish criteria the electric company may use to demonstrate that it sought to serve a preferentially curtailable consumer with Uncommitted Supply before curtailing that consumer [...]*

(15) Sections (13) and (14) of this rule do not limit a New Large Load Direct Access Program participant or longterm opt-out direct access consumer's right to return from default supply to direct access unless: (a) The consumer has provided a notice of return to the electric company's service, or; (b) The consumer remains on default supply for longer than the time period necessary to select an ESS and return to

³⁶ AR 651, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p2, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

³⁷ PGE, Rule C – Conditions Governing Customer Attachment to Facilities B. Short Term Emergency Curtailment, C-2, April 24, 2020, available at: https://assets.ctfassets.net/416ywc1laqmd/5SfZZI4LC1xf9xctCK3Aqr/efcf1b7799f0f10e40863b2141faf54b/Rule_C.pdf

³⁸ List of critical facilities: 911 centers; electric infrastructure; emergency media; emergency operations centers; flood control facilities; hospitals; transportation; waste-water; water supply.

direct access service. *This time period will be determined by the Commission.*”³⁹
[emphases added]

The proposed rules also have an effective date of June 1, 2024. However, PGE believes that these issues should be determined before the rules go into effect.

Proposed rule OAR 860-038-0290(15) would limit the time period a direct access customer could search for and select an ESS while on default supply, which would seem to assume that direct access customers only use default service while waiting to return to cost of service, whereas in practice it is used as a potentially ongoing supply option. The agreement the customer signs with PGE is called a Cost-of-Service Opt-Out agreement; as such, a customer may choose to be served by an ESS or by the default supply option and may switch between the two as they wish. Even when a customer has provided a notice to terminate their NLDA or LTDA contract and return to electric company’s cost of service pricing, that customer may continue to contract with an ESS or may be on default service during the two- or three-year notice period.

In addition to the Commission determinations outlined in the proposed rules and discussed above (caps on non-curtable customers, cost methodology, curtailment criteria, ESS selection time period while on default supply) PGE also supports the Commission making determinations: regarding caps on preferentially curtable customers; on the duration of preferential curtailment risk while on default supply; excluding the ability of a direct access customer to self-curtail; the amount of time a preferentially curtable customer could spend disconnected from the grid and hence the amount of back-up generation a critical facility would require if such direct access customers were eligible for this option; regarding what it means for a direct access customer’s load to be “infeasible to curtail” and how preferential curtailment could “negatively affect cost-of-service consumers”⁴⁰; and the estimated time it would take to install the various permutations (service voltage, meter location) of preferential curtailment infrastructure.⁴¹ PGE, therefore, believes it is critical that the effective date on the proposed preferential curtailment rules allow for the conclusion of a contested case proceeding before the rules come into effect.

³⁹ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, OAR 860-038-0300(7)(8)(10)&(15), p9, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

⁴⁰ *Id.*

⁴¹ See AR 651, PGE’s Comments on Staff’s Updated Preferential Curtailment Proposal, pp9-10, February 3, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac163051.pdf>

IV. OAR 860-038-0300 Electric Company and Electricity Service Supplier Labeling Requirements

PGE supports the changes to ESS labeling requirements and welcomes the addition of a specific annual filing date (November 15).⁴² The Rule Summary states the amendments to OAR 860-038-300 “[...] directs ESSs to disclose energy supply mix and the associated emissions annually.”⁴³ The proposed rules would require an ESS to post a summary of the aggregated energy supply mix and associated emissions for the direct access load served in Oregon in the previous year on its indicative pricing website. OAR 860-038-0275 requires ESSs and investor-owned utilities (IOUs) to provide the Commission with a URL address for a website where they regularly post their indicative pricing.⁴⁴ Since ESS rates are not public, PGE has emphasized that the existing indicative pricing rule needs to be enforced to ensure a minimum level of transparency.⁴⁵ The same enforcement would be necessary to ensure a summary of an ESS’s aggregated energy supply mix was posted on its indicative pricing website.

V. OAR 860-038-405 ESS Emissions Planning Report

The Rule Summary states the amendments to OAR 860-038-405 “[...] establishes the requirements for annual forward-looking ESS Emissions Planning Reports and DEQ [Oregon Department of Environmental Quality] emissions reports.”⁴⁶ The proposed rules for OAR 860-038-0405 would establish requirements that:

“(2) Beginning on January 1, 2027, each ESS certified pursuant to ORS 757.649 that has sold electricity to retail electricity consumers in Oregon in the previous calendar year or has executed a contract to sell electricity to retail electricity consumers Oregon within the following three calendar years are required to file a report in accordance with section (3) of this rule [...] (3) Each ESS must file an Emissions Planning Report on or before June 1 of each calendar year that includes the following: [...] (e) An action plan that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast [...] and [g] Anticipation actions to facilitate rapid reductions of

⁴² AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, OAR 860-038-0300(2), p10, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

⁴³ *Id.* p10.

⁴⁴ See: OAR 860-038-0275(1) and OAR 860-038-0275(4).

⁴⁵ UM 2024, PGE Straw-Proposal for Changes to Long-term Direct Access Programs, filed August 23, 2021, at 6, available at: <https://edocs.puc.state.or.us/efdocs/HAC/um2024hac82045.pdf>

⁴⁶ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, p12, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

greenhouse gas emissions at reasonable costs to retail electricity consumers served by the ESS”.⁴⁷

In PGE’s most recent comments on Staff’s proposal for a 2027 starting date for emission planning reports⁴⁸ it was noted that while HB 2021 requires IOUs to file emissions planning reports “[...] concurrent with the development of each integrated resource plan” it has been left to the Commission’s discretion to determine when an ESS should begin providing estimates of the greenhouse gas emissions associated with electricity sold.⁴⁹ Previous to those most recent comments, PGE also responded that a 2027 start date for ESS Emission Planning Reports: is unlikely to lead to continual progress to meeting the clean energy targets⁵⁰; does not embed HB 2021’s intent to treat ESSs and IOUs comparably; could lead to insufficient time for the Commission to direct an ESS to change its trajectory if it was not on track to meet its mandated target; and, could lead to a lost opportunity for the Commission to ensure that ESSs make headway on this critical shared climate challenge.⁵¹

Furthermore, as PGE discussed at the July 12, 2022, Public Meeting, there are clear benefits between simultaneously planning for both resource adequacy and decarbonization. Such planning synergies would be lost if an ESS does not have to file its initial three-year outlook until 2027. Staff’s updated proposal in UM 2143 (Investigation into Resource Adequacy in the State) would require ESS resource adequacy compliance to be filed “as part of the forward-looking clean energy reporting required for ESSs in HB 2021.”⁵² There would be a significant disparity with IOUs, as discussed further below, if an ESS’s initial resource adequacy compliance filing was not required to be filed until 2027 as part of a forward-looking Emissions Planning Report, while IOUs are required to submit their clean energy plans (CEPs) in 2023.

ORS 469A.420 (4) requires an ESS to file an emissions report annually with the Oregon Department of Environmental Quality (DEQ), while also stating, “[i]n addition to the emissions report required under subsection (4) of this section an electricity service supplier shall report to the commission: (a) An estimate of annual greenhouse gas emissions

⁴⁷ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, p12, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

⁴⁸ AR 651, PGE Comments on Staff’s Division 38 Direct Access Straw Proposal, September 15, 2022, p5, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac161242.pdf>

⁴⁹ An Act Relating to Clean Energy, HB 2021§(4)(1), 81st Oregon Legislative Assembly, 2021 Regular Session, at §§(2)(1), (9)(9) respectively, available at:

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled>

⁵⁰ ORS 469A.420(3)(c)(A) requires an ESS to report to the Commission information as necessary to demonstrate the ability to meet the clean energy targets including “Actions to make continual progress toward meeting the clean energy targets that are consistent with providing affordable, reliable, and clean electricity service”. Available at:

https://www.oregonlegislature.gov/bills_laws/ors/469a.html

⁵¹ AR 651, INFORMAL PHASE: PGE’s Comments on Staff’s Straw Proposal, pp7-8, available at:

<https://edocs.puc.state.or.us/efdocs/HAC/ar651hac174740.pdf>

⁵² UM 2143, Staff’s Updated Process Proposal for Continuation of UM 2143, p4, February 17, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAH/um2143hah93525.pdf>

associated with electricity sold by the electricity service supplier to retail electricity consumers for the current year and following three years [...] (c) Other information necessary, as determined by the commission, to demonstrate the electricity service supplier’s anticipated ability to meet the clean energy targets set forth in ORS 469A.410, including: (A) Actions to make continual progress toward meeting the clean energy targets that are consistent with providing affordable, reliable, and clean electricity service”.⁵³ The use of the phrases “[i]n addition to” and “for the current year” do not suggest the Commission should delay the initial filing of an ESS forward-looking Emissions Planning Report while ESS reporting to DEQ should begin immediately.

PGE has also proposed moving the initial forward-looking ESS Emissions Planning Report to a date in closer alignment bringing the date into closer alignment with the expectations of IOU as well as the intent of HB 2021.⁵⁴ IOUs are required to plan simultaneously for reliability and decarbonization. HB 2021 requires IOUs to “develop a clean energy plan for meeting the clean energy targets [...] concurrent with the development of each integrated resource plan.”⁵⁵ The mitigation of a disparity in obligations if ESSs are not required to plan to reduce emissions until 2027 was envisioned in HB 2021, with ORS 469A.465(2) stating:

“The commission shall review and identify costs incurred by electric companies for obligations not similarly imposed on electricity service suppliers to comply with ORS 469A.400 to 469A.475 that retail electric consumers served by electricity service suppliers may avoid by obtaining electric power through direct access and ensure that the identified costs are recovered from all retail electricity consumers, are calculated and recovered on the basis of electricity consumption and bear a direct relationship to costs borne by retail electricity consumers served by electric companies.”⁵⁶

To bring ESS decarbonization plans into better alignment with those of IOUs, an ESS should begin submitting forward-looking Emission Planning Reports in 2024, the same year as the effective date for the new sections of Staff’s proposed rules in AR 651.⁵⁷

⁵³ ORS 469A.420 available at: https://www.oregonlegislature.gov/bills_laws/ors/ors469a.html

⁵⁴ AR 651, INFORMAL PHASE: PGE’s Comments on Staff’s Straw Proposal, pp7-8, available at: <https://edocs.puc.state.or.us/efdocus/HAC/ar651hac174740.pdf>.

⁵⁵ An Act Relating to Clean Energy, HB 2021 Section (4)(1), 81st Oregon Legislative Assembly, 2021 Regular Session. Available at: <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled>

⁵⁶ ORS 469A.465 (2) Rules: cost recovery, available at: https://www.oregonlegislature.gov/bills_laws/ors/ors469a.html

⁵⁷ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, “860-038-0290 Preferential Curtailment (1) This rule becomes effective June 1 2024” p1 and “860-038-0405 ESS Emission Planning Report (1) From June 1, 2024 [...]”, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocus/HCB/ar651hcb112931.pdf>

VI. OAR 860-038-0590 Transmission and Distribution Access

The Rule Summary states the amendments to OAR 860-038-0590 “[...] provide a necessary exception from section (3) in the event that the preferential curtailment rules in OAR 860-038-0290 are applied and to make housekeeping changes.”⁵⁸ The proposed OAR 860-038-0290 provides new large load direct access and long-term opt-out direct access customers the option of being preferentially curtailable and “directs utilities to curtail returning [preferentially curtailable] customers on emergency default service in specific scenarios.”⁵⁹ The existing OAR 860-038-0590 rules require utilities to “provide non-discretionary access to transmission, distribution, and ancillary services”. The ability to be preferentially curtailed would be a customer choice and should not affect a utility’s requirement to provide non-discretionary access to its transmission and distribution system. Therefore, PGE’s position is that the proposed exemption for non-discriminatory access due to a customer being preferentially curtailed may not be necessary.⁶⁰

⁵⁹ AR 651, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact and Proposed Rules, p9, Filed February 24, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HCB/ar651hcb112931.pdf>

⁶⁰ *Id.* OAR 860-038-0590(3), p14.

CONCLUSION

PGE looks forward to the Rulemaking Hearing on April 4th, 2023.

Respectfully submitted this 31st day of March 2023.

/s/ Shay LaBray

Senior Director, Regulatory Affairs & Strategy

Enclosures:

cc: Michael O'Brien

Proposed Redlines

860-038-0170

Non-bypassable Charges

(1) In determining whether a cost is appropriate for recovery as a non-bypassable charge, the Commission ~~shall~~ **must** consider the following factors:

860-038-0170

Non-bypassable Charges

(11) If a returning preferentially curtailable consumer is served with Uncommitted Supply, the consumer will be charged the greater of the incremental capacity and **incremental** energy costs or the retail energy market costs required to serve on less than the required notice of return in the electric company's direct access program tariff.

(14) If a non-curtailable consumer returns to the electric company's service without the required notice of return under an electric company's direct access program tariff, the electric company shall charge the non-curtailable consumer the greater of the incremental capacity and **incremental** energy costs or the retail energy market costs required to serve on less than the required notice of return.

(1) 860-038-0300

Electric Company and Electricity Service Suppliers Labeling Requirements

(2)) An electricity service ~~provider~~ **supplier** must post a summary of the aggregated energy supply mix and associated emissions for the Direct Access load served in Oregon in the previous year. When historic data is unavailable, the ESS must use a reasonable estimate of future resource mix. The summary must be updated on November 15 of each year (or the next business day if November 15 falls on a Saturday, Sunday, or legal holiday as defined by ORS 187.010) and either included on or via a link on its indicative pricing website as required under OAR 860-038-0275.

860-038-0405

[Bring into alignment with existing ORS 469A.420:

(3) In addition to the emissions report required under subsection (4) of this section, an electricity service supplier shall report to the commission:(a) An estimate of annual greenhouse gas emissions associated with electricity sold by the electricity service supplier to retail electricity consumers **for the current year and following three years"**]

ESS Emissions Planning Report

(3) Each ESS must file an Emissions Planning Report on or before June 1 of each calendar year that includes the following:[...]

- (a) A cover-page with a checklist for each item required by the report, as set forth in this section, and an indication of where that information is found in the report and whether specified information is confidential subject to a protective order. A uniform template for the cover page checklist and Protective Order will be provided on the Commission website under the Reports & Forms section;
- (b) A summary of the specific electricity-generating resources, MWh generation from those resources, emissions per MWh (MTCO₂e/MWh) associated with serving Oregon Direct Access customers, and all emissions from the previous calendar year that were reported to DEQ;
- (c) A load forecast ~~for each of the following three consecutive years~~ **for the current year and following three years**, aggregate for all Oregon Direct Access customers;
- (d) An estimate of the annual greenhouse gas emissions associated with serving Oregon Direct Access customers, forecasted for the ~~following three consecutive years~~ **for the current year and following three years**;
- (e) An action plan **for the current year and following three years** that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology;
- (f) An analysis of the \$/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for **the current year and following three years**, and
- (g) Anticipated actions **for the current year and following three years** to facilitate rapid reductions of greenhouse gas emissions at reasonable costs to retail electricity consumers served by the ESS, including but not limited to:
 - (A) Development of non-emitting dispatchable resources;
 - (B) Demand response offerings;
 - (C) Energy efficiency offerings; and
 - (D) Onsite renewable generation.