

**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
POST-HEARING 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* following the April 4, 2023, Hearing per 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 These comments are submitted in addition to PGE’s pre-Hearing comments filed March 31, 2023.² PGE’s post-Hearing comments:

- explain how PGE excludes loads served by electricity service suppliers (ESSs) from our regional resource adequacy requirements;
- recommend the proposed rules exclude critical facilities on direct access from electing to be preferentially curtailable;
- support a proposed requirement that customers electing to be preferentially curtailed hold the utility harmless from any and all liability;
- seek clarification on the proposed treatment of existing long-term direct access customers on default supply;
- explore Staff’s proposal for how returning direct access customers on default service are charged: and

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>

² AR 651, Portland General Electric Comments on Direct Access Rulemaking, filed March 31, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac111122.pdf>

- recommend the proposed rules do not allow preferentially curtailable customers the option to “self-curtail”.

I. Direct Access Loads and Regional Resource Adequacy

Commissioner Tawney asked at the Hearing how a direct access customer’s designation as ‘preferentially curtailable’ or ‘non-curtailable’ would affect PGE’s resource adequacy forward showings in the regional Western Power Pool (WPP) Western Resource Adequacy Program (WRAP). PGE participates in the WRAP based on merchant load, which excludes load served by ESSs; this is in contrast to our broader Balancing Area Authority (BAA) load, which includes load served by ESSs. Therefore, an ESS-served long-term direct access (or new load direct access) customer’s potential designation as preferentially curtailable (or not) would not affect PGE’s WRAP relevant load.

However, long-term direct access customers’ market-based pricing options include the ‘Company Supplied Energy Option’, which is PGE’s default supply (also referred to as the daily market rate).³ PGE currently includes default supply LTDA loads in our WRAP Year 1 forecast but no further out, reflecting our year ahead forecast in the annual update tariff (AUT) while also accounting for the exclusion of long-term direct access loads from longer-term IRP planning.⁴

II. Curtailment of Critical Facilities and Utility Liability

PGE has previously shared concerns with providing critical facilities⁵ on direct access the option of electing to be preferentially curtailable.⁶ PGE recommends the rules should explicitly exclude critical facilities from opting to be preferentially curtailable. If the final rules allow 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.

In addition, the rules should include language shielding electric utilities from liability in the event that customers are curtailed. PGE generally supports PacifiCorp’s proposal to include rules to “shield electric companies from liability in the event that they follow the prescribed processes in

³ For example, PGE Schedule 485 Large Nonresidential Cost of Service Opt-Out (201-4,000 kW), effective for service on and after May 9, 2022, available at: https://assets.ctfassets.net/416ywc11aqmd/1TbkHDFrg0Z8OR6FeMsagH/4472b0023ccbdb09fc64a5ba41518b54/Sc hed_485.pdf

⁴ UM 1056, Order 07-002, OPUC, January 8, 2007, IRP Guideline 9 (p19), “[a]n electric utility’s load-resource balance should exclude customer loads that are effectively committed to service by an alternative electricity supplier”, available at: <https://apps.puc.state.or.us/orders/2007ords/07-002.pdf>

⁵ List of critical facilities: 911 centers; electric infrastructure; emergency media; emergency operations centers; flood control facilities; hospitals; transportation; waste-water; water supply

⁶ AR 651, Portland General Electric Comments on Direct Access Rulemaking, pp6-7, filed March 31, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac111122.pdf>

their respective tariff(s) but nonetheless have to curtail customers.”⁷ PGE supports PacifiCorp’s proposal of adding an eligibility criterion “that would require any consumer electing to be curtailable to hold the electric company harmless from any and all liability or damages caused by curtailment so long as the electric company follows the Commission’s approved process” and any prescribed processes in respective tariffs.⁸

III. Staff Revisions to Uncommitted Supply Provisions

Staff submitted additional comments ahead of the Hearing aimed at addressing how direct access customers would be charged for “uncommitted supply” if they returned to default service before serving their binding notice of return to cost-of-service (two-years or three-years depending on enrollment period).⁹ As discussed at the Hearing and explained in Section I, long-term direct access customers have the option of going straight to default service. PGE recommends the rules clarify whether the proposed changes to how returning direct access customers are charged extends to customers on default service that have never been served by an ESS. Furthermore, as Staff have propose limiting the amount of time a returning customer can remain on default service before selecting an ESS or returning to cost-of-service,¹⁰ PGE also seeks clarification as to whether customers currently on default service (that have never been served by an ESS) will also be required to make that choice.

Staff’s March comments suggest the following changes to proposed OAR 860-038-0290(11) and (14) could ensure cost-of-service customers would not lose out on the opportunity of selling uncommitted supply to market at a higher price while also avoiding the returning direct access customer paying “a higher cost than market price if the utility’s own generation is more expensive than market”¹¹:

(11) If a returning preferentially curtailable consumer is served with Uncommitted Supply, the consumer will be charged **the greater of** the incremental capacity and 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. **Even if the retail energy market costs are greater than the utility’s own incremental capacity and energy costs, the curtailable consumer will be charged the market cost.**

⁷ AR 651, PacifiCorp’s Comments for the Commission’s April 4, 2023 Workshop, pp7-8, filed March 31, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac133756.pdf>

⁸ AR 651, PacifiCorp’s Comments for the Commission’s April 4, 2023 Workshop, pp7-8, filed March 31, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac133756.pdf>

⁹ AR 651, Staff Comments, pp5-6, filed March 31, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac154318.pdf>

¹⁰ 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>

¹¹ AR 651, Staff Comments, p5, filed March 31, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac154318.pdf>

(14) If a non-curtable 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-curtable consumer ~~the greater of~~ the incremental capacity and energy costs or the retail energy market costs required to serve on less than the required notice of return. **Even if the retail energy market costs are greater than the utility's own incremental capacity and energy costs, the non-curtable consumer will be charged the market cost.**

The proposed revisions state that if the (undefined) "retail energy market" costs are greater than the utility's cost of generation (incremental capacity and incremental energy costs), the returning customer (curtable or non-curtable) will be charged the market rate. This change would seem to be trying to ensure that if the utility could have sold the uncommitted supply to the market at a higher cost than the returning customer would be charged, the utility still captures that difference and could pass the benefits on to cost-of-service customers. At the same time Staff are proposing to try and ensure that the direct customer is not paying "a higher cost than market price if the utility's own generation is more expensive than market"¹². In both these scenarios it appears the returning customer would pay the market rate. PGE recommends keeping "the greater of" language that has been struck out to ensure that existing cost of service customers are held harmless.

IV. Other comments on the proposed rules

At the conclusion of the Hearing the Alliance of Western Energy Consumers (AWEC) stated its intent to request that the proposed rules include the option for preferentially curtable direct access customer to have the ability to "self-curtail". AWEC has previously asserted that "preferential curtailment could be effectuated through contractual means rather than physical" requiring direct access customers to "self-curtail their load or face substantial financial penalties."¹³ PGE does not support the idea that customers should be able to self-curtail in response to a potential energy emergency.¹⁴ There is no guarantee that a customer capable of self-curtailment would respond in a time and manner that would avoid negative system impacts. Curtailment of potentially significant amounts of load in an energy emergency should not be left to the discretion of a sub-set of customers, it should be controlled by the utility responsible for ensuring reliability. While "substantial financial penalties" could be an incentive for a customer to self-disconnect, if penalties are actually incurred then cost-of-service customers could already have been subject to a deterioration in service. Furthermore, utilities would need to control the reconnection of these direct access loads to avoid re-triggering or exacerbating an energy

¹² AR 651, Staff Comments, p5, filed March 31, 2023, available at:

<https://edocs.puc.state.or.us/efdocs/HAC/ar651hac154318.pdf>

¹³ AR 551, Comments of The AWEC, p 3, September 15, 2022, available at:

<https://edocs.puc.state.or.us/efdocs/HAC/ar651hac153535.pdf>

¹⁴ AR 651, PGE's Comments on Staff's Updated Preferential Curtailment Proposal, pp3-4, February 3, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac163051.pdf>

emergency. PGE recommends the rules do not allow for preferentially curtailable customers to be able to disconnect themselves from the grid.

CONCLUSION

PGE looks forward to the final Public Meeting determination on these matters.

Respectfully submitted this 25th day of April 2023.

/s/ Shay LaBray

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Enclosures:

cc: Michael O'Brien