BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 651

In the Matter of OREGON PUBLIC UTILITY COMMISSION, Rulemaking Regarding Direct Access Including HB 2021 Requirements.	STAFF COMMENTS

The Public Utility Commission of Oregon Staff (Staff) files these comments in Docket No. AR 651, Rulemaking Regarding Direct Access Including HB 2021 Requirements. These comments address the updates to the OAR Chapter 860, Division 038 rules that are included in the notice of proposed rulemaking filed On February 24, 2023.

Procedural History

On June 10, 2019, the Commission opened Docket No. UM 2024 to address the Alliance of Western Energy Consumers' (AWEC) petition for a general investigation into long-term DA programs, which noted there was a near-term need to address Direct Access with regards to issues like the changing energy landscape, cost shifting, and competitiveness of a retail market, among others.[1] The Commission granted AWEC's petition in Order No. 19-271.[2]

On October 1. 2021, Administrative Law Judge (ALJ) Christopher J. Allwein's memorandum outlined the Commission's new direction for the docket.[3] The Commission determined that a phased sequence with a non-contested rulemaking followed by a contested case process would allow for more "effective definition, narrowing, and processing of the issues in this proceeding."[4] The memorandum narrowed the scope of issues in the first phase to Direct Access requirements stemming from House Bill (HB) 2021 and some elements of the parties' straw proposals. As part of Phase I, Staff drafted proposed language changes to Division 38 and developed policy guidance on a small set of additional issues.

[1] INITIAL (APPLICATION, COMPLAINT, PETITION), 6/10/2019 (state.or.us).
[2] UM 2024, Order No. 19-271.
[3] UM 2024 Memo 10-01-21.pdf (state.or.us).
[4] Id.

Following roughly nine months of proposals, comments and workshops, Staff proposed moving to a formal rulemaking at the July 12, 2022, Public Meeting.[5] Stakeholders expressed a range of perspectives on Staff's draft rules and proposal to move to a formal rulemaking, including recommendations to revise the non-bypassable charge rule language, add rules that address confidential information in the ESS Emission Planning Reports, and exclude preferential curtailment frameworks at that stage.

The Commission rejected Staff's proposal on the basis that further policy guidance was needed regarding DA program caps, Provider of Last Resort (POLR) obligations, and the feasibility of preferential curtailment. The Commission recommended that Staff develop a revised proposal for these topics and request moving to a formal rulemaking after proposing additional rule language.

On September 1, 2022, Staff filed a straw proposal that enabled preferential curtailment of certain DA customers, added confidentiality protocols for ESS Emission Planning Reports, revised Staff's original non-bypassable charges language, and outlined criteria for considerations to expand DA program caps if applicable. Staff solicited stakeholder comments on the proposal and developed a revised set of rules to include in a formal rulemaking. Staff brought these revised rules before the Commission once again on October 4, 2022. During the public meeting, multiple parties expressed concerns that the rules regarding preferential curtailment needed additional discussion and refinement before implementation. The Commission approved Staff's recommendation to proceed to a formal rulemaking. However, due to the concerns from stakeholders about the POLR and preferential curtailment rules, the Commission directed Staff and parties to solidify more robust POLR and preferential curtailment rules prior to issuing a Notice of Proposed Rulemaking and proceeding with the formal phase.

Since the Commission's determination on October 4, 2022, Staff and parties have engaged in multiple workshops and rounds of comments, specifically focused on POLR and the opportunity for preferential curtailment. The revised rules in Attachment A were developed throughout this process.

The final recommended rule language in Attachment A only includes substantive changes to rules regarding POLR and preferential curtailment since Staff's previous recommendation to move to a formal rulemaking. The previously proposed rules for non-bypassable charges, ESS emission reporting, and disclosure requirements remain largely unchanged. However, the format of the rules has been aligned with the standard for the Secretary of State and the definition of "Non-bypassable Charges" has been moved from 860-038-0170 to the Definitions for Direct Access Regulation section in OAR 860-038-0005(22). Lastly, some definitions in OAR 860-038-0005 have been removed as they were either deemed to be common usage or were already defined in statute.

Summary of Revised Rules in 860-038-0290 and Stakeholder Input

Because the revised rule language in Attachment A only includes substantive changes to the Preferential Curtailment section 860-038-0290, please refer to Staff's report in Commission

[5] Staff Report for July 12, 2022, Public Meeting RM1.

Order No. 22-364 for a description of stakeholder feedback and development for all other proposed rules in Chapter 860, Division 038. The Staff report from Commission Order No. 22-364 is available as Attachment B of these comments.

Staff believes that preferential curtailment provides a workable reliability safeguard in many circumstances. Given the state of the energy industry and the difficulties IOUs will face implementing a reliable and just energy transition for cost-of-service (COS) customers, Staff believes that it is reasonable to adopt policies that encourage DA customers and ESSs to be responsible for their own reliability and promote the efficiency and innovation that retail choice is supposed to capture. In Docket No. UM 2143, Staff has recommended requirements for an ESS to demonstrate resource adequacy (RA) through participation in a binding regional or state program. With this framework in place, Staff believes that enabling preferential curtailment can provide an opportunity to better balance reliability and efficiency rather than relying on the IOU to acquire duplicative capacity resources in case a DA customer returns.

The following sections provide parties' feedback on specific concepts in the proposed preferential curtailment framework as well as additional detail about the intent of certain rules in OAR 860-038-0290.

860-038-0290(1) and 860-038-0290(5)

Multiple parties raised concerns about the timing of the preferential curtailment rules' effective date. Because the contested case portion of UM 2024 will take place following the AR 651 rulemaking, stakeholders requested that section 0290 should not become effective until the contested case concludes. Staff agrees that the contested case will provide certain details that are relevant to a customer's decision to elect to be curtailable or not. To ensure that customers and utilities will have the necessary information prior to making curtailment elections, subsection (1) outlines an effective date of June 1, 2024 for the rules in OAR 860-038-0290. Staff believes this effective date will provide the necessary time for contested case determinations to be finalized before customers and utilities must begin planning to meet any requirements in the rules.

In subsection (5), Staff has included a 12-month minimum timeframe from the effective date of the rules for legacy direct access customers to elect whether to become curtailable or non-curtailable. The annual election window takes place in November, so even if the contested case is not resolved after June 1, 2024, it is likely that customers would still have at least a full year to make their curtailment election.

860-038-0290(3)

Staff's proposed rule directs DA customers to elect to be curtailable or non-curtailable during the November election window. New DA customers will make the election at the time they elect to transition to DA service. Legacy DA customers will make the election in the first election window that falls at least 12 months after the effective date of the section 0290 rules, as stated above. Staff notes that the intent is to provide enough time from the effective date of these rules for legacy customers to make an informed election decision. However, Staff has identified a minor edit in this rule to ensure it is fair. In a situation where space under the cap on non-curtailable load is limited, making the election 12 months after the effective date of the rules

could delay legacy customers from securing space under the cap. New DA customers can make their election during the nearest election window after the effective date of these rules, which could allow a new customer to obtain space under the cap before a legacy customer has the same opportunity. To ensure the rule is fair to legacy customers, Staff recommends the following edit:

> (5) Consumers already participating in a New Large Load Direct Access Program or long-term opt-out direct access service must make the election defined in section (3) of this rule prior to or during the first annual election window that takes place at least 12 months after the effective date of this rule.

Staff recommends adding "*prior to or during"* to ensure that legacy DA customers can make the curtailment election at the same time a new customer is able to. Additionally, a customer may elect to change their curtailment election each year during the annual November window.

In comments, NIPPC suggested that the rule should clarify that DA customers are able to elect whether a given load is curtailable or not.[6] Staff agrees that the feasibility of curtailment could be different for loads of different sizes or at certain service points, among other factors. Staff has included NIPPC's suggestion to ensure that a customer is not entirely excluded from becoming curtailable due to an issue at a single service point or with a portion of load.

860-038-0290(4)(b)

Staff has included a rule outlining when a returning DA customer cannot be curtailed. Multiple parties have noted that it is necessary to include more detail about what type of load is considered infeasible to curtail. While Staff agrees that infeasibility will need to be defined, it is a determination that is best suited for the contested case. Many factors influence a utility's ability to curtail. PacifiCorp has stated that a load could only be curtailable if it is above a certain megawatt threshold and can be curtailed in under 10 minutes. These types of criteria will require additional fact-finding in the contested phase to determine what should be classified as infeasible to curtail.

860-038-0290(7)

In previous straw proposals, Staff had proposed a backstop capacity charge for non-curtailable load, and no such charge for curtailable loads. Multiple parties including AWEC, NIPPC, Brookfield, and Calpine did not support a backstop capacity charge, and PacifiCorp proposed an alternative that would introduce a cap on non-curtailable load in lieu of an upfront capacity charge. Parties were more amenable to the cap framework, and Staff has included this idea in rule. Staff notes that subsection (7) does not limit the Commission's discretion to set caps on other sections of DA load, nor does it obligate the Commission to set any additional cap. This rule is exclusive to non-curtailable load.

The cap should be set at a level that limits any potential reliability and cost impacts in the event DA customers return to default supply. Staff has removed language that imposes a backstop

[6] Docket No. AR 651, NIPPC Supplemental Comments on Preferential Curtailment Proposal, at 5, (February 3, 2023).

capacity charge but has added provisions in other subsections that ensure any generation or market purchases that serve a returning DA customer are priced at a level that does not harm COS consumers.

860-038-0290(8)
Staff has continued to include the provision that all costs for curtailment infrastructure must be paid for by the DA customer. This continues to be an important safeguard against cost shifting to COS customers.

860-038-0290(9) and 860-038-0290(10)
PAC and PGE have expressed concerns about liability in a situation where a utility is allowed to curtail a returning customer. Staff has included that a returning customer should be served with Uncommitted Supply if possible before opting to curtail the customer. Uncommitted Supply is defined to only be true excess generation or market purchases that are not used for the utility's contractual obligations, reserve margins, or COS customers. Additionally, Staff has included that the Commission will set criteria that clarify how the utility can ensure it has complied with the rules when enacting curtailment.

Staff notes that PAC proposed rule language outlining an application process for customers who elect to be curtailable that the utility would approve or deny. Staff believes such a framework may be too prescriptive to include in rules and may function more effectively in a tariff. This level of detail may need to be informed by findings in the contested case as well.

860-038-0290(11) and 860-038-0290(14)
Without requiring dedicated backstop capacity investment for a DA customer, there is the potential for a returning customer to be served with generation that could have been sold at a higher market price. COS customers could lose an opportunity to receive the benefit from that price difference. Subsections (13) and (14) ensure that the DA customer pays the higher market price so that COS customers retain the potential benefit from selling excess utility supply.

Staff recommends a minor change to these rules compared to the Notice of Proposed Rulemaking. Staff recently became aware that, as written, the rule would require the customer to unnecessarily pay a higher cost than market price if the utility's own generation is more expensive than market prices. This requirement would not provide any additional safeguards to COS customers and is not needed. Staff recommends the following change to the rules:

> (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.

(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 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-curtailable consumer will be charged the market cost.

860-038-0290(15)

Currently, a returning DA customer must move from emergency default service to standard offer service after 5 days. The customer can remain on standard offer indefinitely until either returning to DA or choosing to move to COS. Staff believes that the ability to remain on standard offer indefinitely could present risks to COS customers. If the utility begins purchasing market energy for a returning customer after they leave emergency default service, any inability to obtain that energy would potentially impact COS. This situation could become exacerbated in an event with multiple ESS failures or market illiquidity.

Instead, subsection (15) includes a time-limited process where the returning customer could elect to remain on default supply for the duration of the required notice of return under a utility's DA tariff or go back to an ESS. This timeframe would be determined by the Commission, and the customer would pay the cost of generation or market supply price (as described in subsections (11) and (14)) required to serve them for that duration. The customer could opt to return to direct access at any point during this time, but if they remain on standard offer after this window, the customer will have to remain on that schedule for the remainder of the notice of return period before returning to COS. Staff believes this rule better protects COS customers, especially when a backstop capacity charge is not present in the POLR framework.

Future Process in UM 2024

Upon conclusion of this rulemaking, Staff will begin to transition to the contested case phase in UM 2024. Staff anticipates that at least the following topics will be addressed over the course of the contested case:

- Existence and level of caps on Direct Access, including non-curtailable load.
- Determining criteria for a customer to be preferentially curtailable.
- Methodology for collecting the costs associated with curtailment infrastructure.
- Types of charges that are non-bypassable by Direct Access.
- ESS emission reporting template, compliance, and Commission evaluation.

This concludes Staff's comments.

Dated this 31st day of March, 2023.

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Strategy & Integration
503-508-0722

ATTACHMENT A: Notice of Proposed Rulemaking

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 860
PUBLIC UTILITY COMMISSION

FILED
02/24/2023 4:51 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Direct Access Rulemaking (AR 651)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/25/2023 4:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
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Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/04/2023
TIME: 1:30 PM
OFFICER: Christopher J. Allwein

REMOTE MEETING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 1-669-254-5252
CONFERENCE ID: 1605134000

NEED FOR THE RULE(S)

These rules are needed to assist with implementation of House Bill (HB) 2021 (2021) sections 5, 14, and 25 as well as to update the rules for Direct Access (DA). Updates include housekeeping measures, word changes for clarification and the elimination of redundancies. The proposed rules outline the criteria for charges that cannot be bypassed by taking DA service, require disclosures of emissions information for ESSs, direct utilities to implement preferential curtailment in certain emergency default service scenarios, and codifies the requirements for ESS emissions planning reports addressed in HB 2021 now Oregon Laws 2021, Chapter 508.

Any person may file comments by April 25, 2023. The Commission encourages participants to file written comments concerning the proposed rule revisions as early as practicable in the proceeding so that other participants can consider and respond to the comments before the deadline.

Participants who present oral comment at the April 4, 2023, hearing will be asked to also submit written comments before the comment period closes on April 25, 2023.

Please reference Docket No. AR 651 on comments and attach them as a Word or pdf file to an e-mail to the Commission's Filing Center at PUC.FilingCenter@puc.oregon.gov.

Interested persons may review all filings online at https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=23063. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and OAR 860-001-0200 through 860-001-0250 found online at https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4027.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 2021 (Oregon Laws 2021, Chapter 508) available online at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2021orlaw0508.pdf

ALJ Christopher J. Allwein's Memorandum available online at https://edocs.puc.state.or.us/efdocs/HDA/um2024hda165613.pdf

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The rules are expected to have little to no direct impact on racial equity in the state of Oregon and only apply to Direct Access. Indirectly, allowing large utility customers with high energy demand to shop for direct access to energy supplies may assist certain customers to remain or become more competitive in a global economy, and thus facilitate job retention and economic growth and the potential alleviation of some economic inequity exacerbating racial inequity.

FISCAL AND ECONOMIC IMPACT:

Staff time will need to be dedicated to the implementation of the rules, but the Commission anticipates that no additional FTE will be required. The Commission does not anticipate that these rules will impose costs on other state agencies.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) It is unlikely that agencies and units of local government will be impacted, however, Energy Service Suppliers (ESS) will be impacted to the extent that they are required to provide additional reporting. The rules apply to Electric Utilities and Electricity Service Suppliers who serve Direct Access customers whose relatively high energy demand is indicative of larger businesses.

(2)(a) Small businesses are unlikely to be impacted by the rules.

(b) Small businesses are unlikely to be impacted by the rules.

(c) Small businesses are unlikely to be impacted by the rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not specifically targeted during the rule development process. PUC stakeholders from the UM 2024 service list were invited to participate in all informal processes for the AR 651 rulemaking.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

These rules adopt in part the requirements of HB 2021 and provide additional detail around requirements for Direct Access in Oregon. PUC Staff held workshops and rounds of written comments with stakeholders prior to opening this

formal stage of rulemaking.

RULES PROPOSED:

860-038-0005, 860-038-0170, 860-038-0290, 860-038-0300, 860-038-0405, 860-038-0590, 860-038-0740

AMEND: 860-038-0005

RULE SUMMARY: This rule adds a definition for "Preferential Curtailment," deletes unnecessary definitions, arranges the definitions alphabetically, and renumbers the rule provisions.

CHANGES TO RULE:

860-038-0005
Definitions for Direct Access Regulation ¶

As used in this Division:¶
(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.¶
(2) ~~"Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:¶~~
~~(a) Local governments;¶~~
~~(b) Electric companies;¶~~
~~(c) Residential consumers;¶~~
~~(d) Public or regional interest groups; and¶~~
~~(e) Small nonresidential consumers.¶~~
~~(3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.¶~~
~~(4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.¶~~
~~(5)~~ "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control, and energy balancing services.¶
~~(6) "Commission" means the Public Utility Commission of Oregon.¶~~
~~(7) "Common costs" means costs that cannot be directly assigned to a particular function.¶~~
~~(8~~3) "Competitive operations" means any electric company's activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:¶
(a) Energy efficiency audits and programs;¶
(b) Sales, installation, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and¶
(c) Energy management services, including those services related to electricity metering and billing. Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.¶
~~(9) "Constructing and operating," as used in ORS 757.612(3)(b)(B), means constructing, or operating, or both.¶~~
~~(a) As used in ORS 757.612(3)(b)(B), "constructing" includes the following activities:¶~~
~~(A) Pre-development project studies, activities or costs that are related to the planned development of a new renewable energy resource that a developer or owner would reasonably expect to incur; and¶~~
~~(B) Activities or costs directly related to the building of a new renewable energy resource.¶~~
~~(b) As used in ORS 757.612(3)(b)(B), "operating" includes the activities and costs necessary for a new renewable energy resource to function and to be maintained in good working order.¶~~
~~(10) "Consumer-owned utility" means a municipal electric utility, a people's utility district, or an electric cooperative.¶~~
~~(11) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.¶~~
~~(12~~4) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a

consumer, as determined by the Commission.¶
(~~13~~5) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.¶
(~~14~~6) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.¶
~~(15) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.¶~~
~~(16) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.¶~~
~~(17) "Divestiture" means the sale of all or a portion of an electric company's ownership share of a generation asset to a third party.¶~~
(~~18~~7) "Economic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.¶
~~(19) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.¶~~
(~~20~~8) "Electric company operational information" means information obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as "competitive operations." Such information includes, but is not limited to, data relating to the interconnection of customers to an electric company's transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company's transmission or distribution system, processes, operations, or plans or strategies for expansion.¶
~~(21) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.¶~~
~~(22) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.¶~~
~~(23) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.¶~~
~~(24) "Electricity services" means electricity distribution, transmission, generation, or generation-related services.¶~~
(~~25~~9) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.¶
(~~26~~10) "Emergency default service" means 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.¶
(~~27~~11) "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.¶
(1~~28~~) "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.¶
(~~29~~13) "Joint marketing" means the offering (including marketing, promotion, or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its Oregon affiliate, or through contact initiated by the consumer.¶
(~~30~~14) "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.¶
~~(31) "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.¶~~
~~(32) "Local energy conservation" means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.¶~~
~~(33) "Low-income weatherization" means repairs, weatherization, and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.¶~~
~~(34) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.¶~~
(~~31~~5) "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.¶

~~(3~~16) ~~"Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.~~¶
~~(37)~~ "New" as it refers to energy conservation, market transformation, and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.¶
~~(38) "New renewable energy resource," as used in ORS 757.612(3)(b)(B), has the meaning provided in 757.600(21) and references a specifically identified project that has, or is planned to have after construction, a nominal electric generating capacity, as defined in 469.300, of 20 megawatts or less.~~¶
~~(39~~17) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.¶
~~(40) "Nonresidential consumer" means a retail electricity consumer who is not a residential consumer.~~¶
~~(41~~8) "Ongoing valuation" means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.¶
~~(42~~19) "One-time administrative valuation" means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.¶
~~(43~~20) "One average megawatt" means 8,760,000 kilowatt-hours (8,784,000 in a leap year) of electricity per twelve consecutive month period.¶
~~(44) "Oregon affiliate" means an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.~~¶
~~(45~~21) "Oregon share" means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.¶
~~(46~~22) ~~"People's utility district" has the meaning given that term in ORS 261.010~~Non-bypassable Charges" are costs that are directed by the legislature to be recovered by all customers or charges that retail consumers served by electricity service suppliers otherwise may avoid by obtaining electric power through direct access that are determined by the Commission to be appropriate for recovery from all customers.¶
~~(47~~23) "Portfolio" means a set of product and pricing options for electricity.¶
~~(48~~24) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:¶
(a) Local governments;¶
(b) Electric companies;¶
(c) Residential consumers;¶
(d) Public or regional interest groups; and¶
(e) Small nonresidential consumers.¶
(25) "Preferential Curtailment" refers to the electric company's obligation to curtail eligible direct access consumers that return to the electric company service without providing the electric company with the full period of notice required by the electric company's direct access program tariff. The electric company must curtail such consumers as necessary to protect cost-of-service customers from the impacts of the returning consumer's unplanned load.¶
(26) "Proprietary consumer information" means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.¶
(~~49~~27) "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Oregon Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.¶
(~~50~~28) "Registered dispute" means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission's Consumer Services Section but is not the subject of a formal complaint.¶
~~(51) "Regulated charges" means charges for services subject to the jurisdiction of the Commission.~~¶
~~(52) "Regulatory assets" means assets that result from rate actions of regulatory agencies.~~¶

(5329) "Renewable energy resources" means:¶
(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;¶
(b) Dedicated energy crops available on a renewable basis;¶
(c) Landfill gas and digester gas; and¶
(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.¶
(5430) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.¶
(5531) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.¶
(5632) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.¶
~~(57) "Serious injury to person" has the meaning given in OAR 860-024-0050.¶~~
~~(58) "Serious injury to property" has the meaning given in OAR 860-024-0050.¶~~
(5933) "Site" means:¶
(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or¶
(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:¶
(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;¶
(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and¶
(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.¶
~~(60) "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.¶~~
~~(61) "Special contract" means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.¶~~
(6234) "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.¶
(635) "Total transition amount" means the sum of an electric company's transition costs and transition benefits.¶
(364) "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.¶
(6537) "Transition benefits" means the value of the below-market costs of an economic utility investment.¶
(6638) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.¶
(6739) "Transition costs" means the value of the above-market costs of an uneconomic utility investment.¶
(6840) "Transition credit" means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.¶
(6941) ~~"Transmission grid" means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industrie~~Unbundling" means the process of assigning and allocating a utility's costs into functional categories.¶
(42) "Uncommitted Supply" is 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, and

federal reliability standards.¶
(7043) "Unbundling" means the process of assigning and allocating a utility's costs into functional categories.¶
(71economic Cost of Implementing a Public Policy Goal" means the difference between the cost of implementing the public policy goal and the regulated costs that are avoided as a result of implementing the public policy goal. ¶
(44) "Uneconomic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.¶
(7245) "Unspecified Market Purchase Mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Oregon Department of Energy.
Statutory/Other Authority: ORS 183, 756,ORS 756, ORS 757
Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

ADOPT: 860-038-0170

RULE SUMMARY: This rule articulates criteria used in Commission determinations on whether a charge should not be able to be bypassed as a result of taking Direct Access service.

CHANGES TO RULE:

860-038-0170
Non-bypassable Charges
(1) In determining whether a cost is appropriate for recovery as a non-bypassable charge, the Commission shall consider the following factors:¶
(a) whether it is required by statute;¶
(b) whether it is an uneconomic cost of implementing a public policy goal such as those identified in ORS 469A.465 or similar public policy goals related to reliability, equity, decarbonization, resiliency or other public interest for which retail consumers served by electricity service suppliers otherwise would not meaningfully contribute;¶
(c) whether or not it confers a demonstrable electric system benefit on some customers over others;¶
(d) whether it is in the public interest;¶
(e) whether it is necessary to be non-bypassable under the Commission's discretion in order to establish fair, just, and reasonable rates and prevent unwarranted cost shifting.¶
(2) All retail electricity consumers served by Direct Access are responsible for paying Non-bypassable Charges as determined by the Commission.
Statutory/Other Authority: ORS 183, ORS 756, ORS 757
Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

ADOPT: 860-038-0290

RULE SUMMARY: This rule directs utilities to curtail returning customers on emergency default service in specific scenarios.

CHANGES TO RULE:

860-038-0290
Preferential Curtailment
(1) This rule becomes effective June 1, 2024. ¶
(2) Except as provided in sections (4), (8), and (9) of this rule, each electric company must provide preferential curtailment of New Large Load Direct Access Program participants, as defined in OAR 860-038-0700(2)(d), and long-term opt-out direct access consumers.¶
(3) At the time a consumer makes its direct access election, New Large Load Direct Access Program participants and long-term opt-out direct access consumers must elect whether a given load will be preferentially curtailable or non-curtailable. A consumer that makes no such election will be deemed non-curtailable.¶
(4) An electric company may not preferentially curtail the load of a direct access consumer when:¶
(a) The direct access consumer, has elected to be non-curtailable during the election period, or;¶
(b) The direct access consumer's load is infeasible to curtail, or;¶
(c) When the preferential curtailment of a direct access consumer would negatively affect cost-of-service consumers.¶
(5) Consumers already participating in a New Large Load Direct Access Program or long-term opt-out direct access service must make the election defined in section (3) of this rule during the first annual election window that takes place at least 12 months after the effective date of this rule. ¶
(6) A consumer may change their curtailment election during the annual election window each year. ¶
(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. Any given load that a consumer elects to be curtailable will be considered non-curtailable until the system upgrades required to curtail the load are installed, tested, and properly functioning.¶
(9) If 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. ¶
(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. ¶
(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.¶
(12) If Uncommitted Supply is not available, the electric company may preferentially curtail returning nonresidential direct access consumers' load that has been elected to be curtailable.¶
(13) 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. ¶
(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 energy costs or the retail energy market costs required to serve on less than the required notice of return. ¶
(15) Sections (13) and (14) of this rule do not limit a New Large Load Direct Access Program participant or long-term 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 direct access service. This time period will be determined by the Commission.
Statutory/Other Authority: ORS 183, ORS 756, ORS 757
Statutes/Other Implemented: ORS 756.040, ORS 757.600-757.667

AMEND: 860-038-0300

RULE SUMMARY: This rule change directs ESSs to disclose energy supply mix and the associated emissions annually.

CHANGES TO RULE:

860-038-0300
Electric Company and Electricity Service Suppliers Labeling Requirements ¶

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.¶
(2) An electricity service provider 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 in 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.¶
(3) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers annually, or at a frequency prescribed by the Commission. The information must be based on the available service options. The information must be supplied consistent with the requirements prescribed by the Commission. The electric company must report price information for each service or product for residential consumers based on the average monthly bill and price per kilowatt-hour for the available service options.¶
(34) An electric company and an electricity service supplier must provide price, power source and environmental impact information to nonresidential consumers consistent with the requirements and frequency prescribed by the Commission. An electric company and an electricity service supplier must report price information for nonresidential consumers as follows:¶
(a) The price and amount due for each service or product that a nonresidential consumer is purchasing;¶
(b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;¶
(c) The amount of any public purpose charge; and¶
(d) The amount of any transition charge or credit.¶
(45) For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the unspecified market purchase mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the unspecified market purchase mix. The electric company must report power source and environmental impact information for standard offer sales based on the unspecified market purchase mix.¶
(56) For purposes of power source and environmental impact reporting, an electric company and an electricity service supplier should use the most recent unspecified market purchase mix unless the electric company or electricity service supplier is able to demonstrate a different power source mix and environmental impact. A demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar year. Power source must be reported as the percentages of the total product supply including the following:¶
(a) Coal;¶
(b) Hydroelectricity;¶
(c) Natural gas;¶
(d) Nuclear; and¶
(e) Other power sources including but not limited to new renewable resources, if over 1.5 percent of the total power source mix.¶
(67) Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:¶
(a) Carbon dioxide, measured in lbs./kWh of CO_2 emissions;¶
(b) Sulfur dioxide, measured in lbs./kWh of SO_2 emissions;¶
(c) Nitrogen oxides, measured in lbs./kWh of NOx emissions; and¶

(d) Mercury, measured in lbs/kWh of Hg emission.¶
(~~7~~8) Every bill to a direct access consumer must contain the electricity service supplier's and the electric company's toll-free number for inquiries and instructions as to those services and safety issues for which the consumer should directly contact the electric company.¶
(~~8~~9) The electricity service supplier must provide price, power source, and environmental impact in all contracts and marketing information.¶
(~~9~~10) The electric company must provide price, power source, and environmental impact in all standard offer marketing information.¶
(~~10~~1) By September 1, each electric company and each electricity service supplier making any claim other than unspecified market purchase mix must file a reconciliation report for the prior calendar year on forms prescribed by the Commission. The report must provide a comparison of the power source mix and emissions of all of the seller's certificates, purchase or generation with the claimed power source mix and emissions of all of the seller's products and sales.¶
(~~11~~2) Each electricity service supplier and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.
Statutory/Other Authority: ORS 183, 756, 757
Statutes/Other Implemented: ORS 756.040, 757.600 - 757.667

ADOPT: 860-038-0405

RULE SUMMARY: This rule establishes the requirements for annual forward-looking ESS Emissions Planning Reports and DEQ emissions reports.

CHANGES TO RULE:

860-038-0405
ESS Emissions Planning Report
(1) From June 1, 2024, through May 30, 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 in Oregon within the following three calendar years are required to file a copy of the annual greenhouse gas emissions report submitted to the Oregon Department of Environmental Quality in accordance with Oregon Laws 2021, Chapter 508, Section 5(4)(a) within 10 days of filing with the Oregon Department of Environmental Quality.¶
(2) Beginning on January 1, 2027, each ESS certified under 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 in Oregon within the following three calendar years are required to file a report in accordance with section (3) of this rule. If prescribed by the Commission, each ESS must use established forms to provide information required under this rule.¶
(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, 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; ¶
(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 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 each of the next 3 years, and¶
(g) Anticipated actions 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.¶
(4) ESS's serving customers or generating electricity in multiple electric company service territories must separate the report's contents referred to in section (3) of this rule by each unique service territory.¶
(5) Commission staff and interested persons may file written comments on each ESS's Emissions Planning Report within 45 calendar days of the filing. The ESS may file a written response to any comments within 30 calendar days thereafter. After considering written comments, the Commission may decide to commence an investigation, begin a proceeding, or take other action as necessary to make a determination regarding Oregon Laws 2021, Chapter 508, Section 5 requirement for continual and reasonable progress toward compliance with the clean energy targets set forth in Oregon Laws 2021, Chapter 508, Section 3.¶
(6) Upon conclusion of the Commission review of the report in section (3) of this rule, the Commission will issue a decision to acknowledge the ESS's Emissions Planning Report if it demonstrates continual and reasonable progress toward compliance with state clean energy targets. If the Commission determines the Emissions Planning Report does not demonstrate continual and reasonable compliance, the ESS must file an updated Emissions Planning Report that addresses the Commission's concerns within 90 days.¶
(7) The ESS must post a non-confidential version of the Emissions Planning Report on its website within 30 days of the Commission decision whether to accept the report. The ESS must also provide information about its compliance report to its customers by bill insert or other Commission-approved method.¶

(8) Availability of Information:¶
(a) Information regarding an analysis of the $/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for each of the next 3 years, as required by section 3(f) of this rule will be available for review only by Qualified Statutory Parties, meaning any Commission Staff and any representatives of the Citizen's Utility Board, who executed a modified protective order.¶
(b) The following information shall be available for review only by Non-Market Participants that have executed a modified protective order:¶
(A) 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 consistent with the DEQ emissions reporting methodology, as required in Section 3(e) of this rule; ¶
(B) Information regarding the load forecast for each of the following three consecutive years, aggregate for all Oregon Direct Access customers, as required by Section 3(c) of this rule; and ¶
(C) The summary of the specific electricity-generating resources and MWh generation from those resources, as required by Section 3(b) of this rule. ¶
(c) For purposes of this rule, Non-Market Participants includes Commission Staff, the Citizen's Utility Board, and non-profit organizations engaged in environmental advocacy that do not otherwise participate in electricity markets.
Statutory/Other Authority: ORS 183, ORS 756, ORS 757
Statutes/Other Implemented: ORS 756.040, ORS 757.600-757.667

AMEND: 860-038-0590

RULE SUMMARY: This rule is amended to 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.

CHANGES TO RULE:

860-038-0590
Transmission and Distribution Access ¶

(1) An electric company may be relieved of some or all of the requirements of this rule by placing its transmission facilities under the control of a regional transmission organization consistent with FERC Order No. 2000 and obtaining Commission approval of an exemption.¶
(2) An ESS may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs. The electric company ~~shall~~must coordinate the filings of these tariffs to ensure that all retail and direct access consumers are offered comparable services at comparable prices.¶
(3) Except as otherwise directed by OAR 860-038-0290, each electric company ~~shall~~must provide nondiscriminatory access to transmission, distribution, and ancillary services, including transmission into import-limited areas and local generation resources within import-limited areas, to serve all retail consumers. An electric company ~~shall~~may not give preference or priority in transmission and distribution pricing, transmission and distribution access, or access to, pricing of, or provision of ancillary services and local generation resources, to itself or its affiliate relative to persons or entities requesting transmission or distribution access to serve direct access consumers. No preference or priority may be given to, nor any different obligation assigned to, any consumer based solely on whether the consumer is purchasing service from an electric company or an ESS. ¶
(a) Any transmission or distribution capacity to which an electric company has entitlements, by ownership or by contract, for the purpose of serving its Oregon load ~~shall be~~must made available to an electric company and ESSs that are serving such load on at least a pro rata basis. An electric company ~~shall~~must describe in its tariff filings how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if:¶
(A) Access to the electric company's transmission or distribution facilities or entitlements is restricted by contract or by regulatory obligations in other jurisdictions; or¶
(B) If providing transmission or distribution service on a pro rata basis would result in stranding generating capacity owned or provided through contract by the electric company;¶
(b) Except for those ancillary services required by FERC to be purchased from an electric company, an ESS may acquire, on behalf of the retail loads for which it is responsible, all ancillary services required relative to the transmission of electricity by any combination of:¶
(A) Purchases under the electric company's Open Access Transmission Tariff;¶
(B) Self-provision; or¶
(C) Purchases from a third party;¶
(c) Energy imbalance obligations, including the pricing of imbalances and penalties for imbalances, ~~shall~~must be developed to reasonably minimize imbalances and to meet the needs of the direct access market environment. The electric company ~~shall~~must address such energy imbalance obligations in its proposed FERC tariffs. Energy imbalance obligations imposed upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, ~~shall~~must comply with the following:¶
(A) The obligations ~~shall~~ impose substantively comparable burdens upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, and ~~shall~~may not unreasonably differentiate between consumers that are entitled to direct access on the basis of customer class, provider of the service, or type of access;¶
(B) The obligations ~~shall~~ recognize the practical scheduling and operational limitations associated with serving retail consumer loads in the direct access environment, but ~~shall~~ require ESSs, including the entity serving the standard offer load, to make reasonable efforts to minimize their energy imbalances on an hourly basis;¶
(C) The obligations ~~shall~~ be designed with the objective of deterring ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company from burdening electric system operation or gaining economic advantage by under-scheduling, over-scheduling, under-generating or over-generating. The obligations ~~shall~~may not be punitive in nature; and¶
(D) The obligations ~~shall~~ enable an electric company and ESSs, including the entity serving the standard offer load, to settle for energy imbalance obligations on a financial basis, unless otherwise mutually agreed to by the parties.¶
(d) Where local generation is required to operate for electric system security or where there is insufficient transmission import capability to serve retail loads without the use of local generation, the electric company ~~shall~~must make services available from such local generation under its ownership or control to ESSs consistent

with the electric company's provision of services to standard offer consumers, residential consumers, and other retail consumers. The electric company ~~shall~~must also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;¶
(e) The electric company's tariffs ~~shall~~must specify prices, terms, and conditions for scheduling, billing, and settlement. Other functions may be specified as needed;¶
(f) An electric company's tariffs ~~shall~~must include a dispute resolution process to resolve issues between the electric company and the ESSs that serve the retail load of an electric company in a timely manner. Such processes ~~shall~~must provide that unresolved disputes related to such retail access matters may be appealed to the Commission.¶
(4) If adherence to ~~OAR 860-038-0590~~this rule requires FERC approval of tariff or contract provisions, the electric company must petition FERC for the approval of the tariff or contract provisions ~~within 90 days of the effective date of this rule. Subsequent tariffs or contracts requiring FERC approval will be made~~ in a timely manner.
Statutory/Other Authority: ORS 183, ~~756,~~ORS 756, ORS 757
Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

AMEND: 860-038-0740

RULE SUMMARY: This rule is amended to become consistent with the rules regarding non-bypassable charges in OAR 860-038-0170.

CHANGES TO RULE:

860-038-0740
New Large Load Program Enrollment and Rates
(1) Each New Large Load consumer must notify the electric company of its intent to enroll in the New Large Load Direct Access Program and opt out of cost-of-service rates at the earlier of either:¶
(a) A binding written agreement with the utility for eligible new load, or ¶
(b) One year prior to the expected starting date of the incremental load.¶
(2) Section (1) of this rule is waived for the eligible New Large Load consumer that has entered into a written agreement with an electric company prior to September 30, 2018, indicating its intent to receive distribution service from an electric company and for which the electric company has not planned to provide generation supply service.¶
(3) An electric company must charge New Large Load Direct Access participants a New Large Load Direct Access Service Transition Rate that recovers the following:¶
(a) 20 percent of the fixed generation costs for five years; and¶
(b) All reasonable costs of administering the New Large Load Direct Access Program.¶
(4) Participants receiving service under the New Large Load Direct Access program must also pay an Existing Load Shortage Transition Adjustment on the sum of the Existing Load Shortage for the participant and the Existing Load Shortage of all of the participant's affiliated consumers. ¶
(a) For purposes of this rule, "affiliated consumer" means a consumer, a controlling interest which is held by another consumer, engaged in the same line of business as the holder of the controlling interest. ¶
(b) For the purposes of this rule, "Existing Load Shortage" means the larger of zero or a consumer's Average Historic Cost-of-Service Load plus Incremental Demand Side Management less the average Cost-of-Service Eligible Load during the previous 60 months.¶
(c) The Existing Load Shortage Transition Adjustment is a charge or credit equal to:¶
(A) 75 percent of fixed generation costs plus net variable power cost transition adjustments during the first five years after enrollment in the New Large Load Direct Access Program; and ¶
(B) 100 percent of fixed generation costs plus net variable power cost transition adjustments after the first five years of enrollment in the New Large Load Direct Access program.¶
(5) A participant may be exempted from charges made under section (4) of this rule if the participant can demonstrate that the change in load in question is not due to load shifting activity. For purposes of this rule, "load shifting" means the relocation of facilities, equipment, processes, manufacturing, employees or any economic activity for the deliberate purpose of increasing load at locations participating in the New Large Load Direct Access Program from locations not subject to the New Large Load Direct Access Program. The electric company tariff must include provisions detailing procedures and requirements for a participant to make this demonstration. ¶
(6) A participant must also pay non-bypassable charges, in accordance with OAR 860-038-0170.
Statutory/Other Authority: ORS ~~Ch.~~ 183, ~~756.~~ORS 756, ORS 757
Statutes/Other Implemented: ORS 75~~6.040, 757.600 through 757.667~~7.600 - 757.667, ORS 756.040

ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 4, 2022

REGULAR X CONSENT ____ EFFECTIVE DATE N/A

DATE: September 26, 2022

TO: Public Utility Commission

FROM: Madison Bolton

THROUGH: Bryan Conway, Caroline Moore, Scott Gibbens

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. AR 651)
Staff's revised recommendation to move the Direct Access Rulemaking to the formal stage.

STAFF RECOMMENDATION:

Staff recommends that the Oregon Public Utility Commission (Commission) adopt Staff's policy guidance on Direct Access caps, approve Staff's request to open a formal rulemaking on Direct Access (DA), and issue a notice of proposed rulemaking to adopt permanent rules addressing the revision to OAR Chapter 860, Division 038 included in Attachment A.

DISCUSSION:

Issue

Whether the Commission should adopt Staff's recommendation on Direct Access caps and open a formal rulemaking to adopt revisions to Direct Access rules in OAR Chapter 860, Division 038.

Applicable Rule or Law

Pursuant to ORS 756.060, the Commission "may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission and

may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and telecommunications utilities and other parties before the commission."
The Oregon Administrative Procedures Act provides procedural guidelines for adopting or amending administrative rules, including specific processes for contested case proceedings.

OAR 860-038-0001 applies the Division 038 rules to electric companies and electricity service suppliers (ESS) serving Direct Access customers in the state of Oregon.

Analysis

Procedural Background
On June 10, 2019, the Commission opened Docket No. UM 2024 to address the Alliance of Western Energy Consumers' (AWEC) petition for a general investigation into long-term DA programs, which noted there was a near-term need to address Direct Access with regards to issues like the changing energy landscape, cost shifting, and competitiveness of a retail market, among others.[7] The Commission granted AWEC's petition in Order No. 19-271.[8]

On October 1. 2021, Administrative Law Judge (ALJ) Christopher J. Allwein's memorandum outlined the Commission's new direction for the docket.[9] The Commission determined that a phased sequence with a non-contested rulemaking followed by a contested case process would allow for more "effective definition, narrowing, and processing of the issues in this proceeding."[10] The memorandum narrowed the scope of issues in the first phase to Direct Access requirements stemming from House Bill (HB) 2021 and some elements of the parties' straw proposals. As part of Phase I, Staff drafted proposed language changes to Division 38 and developed policy guidance on a small set of additional issues.

Following roughly nine months of proposals, comments and workshops, Staff proposed moving to a formal rulemaking at the July 12, 2022, Public Meeting.[11] Stakeholders expressed a range of perspectives on Staff's draft rules and proposal to move to a formal rulemaking including recommendations to revise the non-bypassable charge rule language, add rules that address confidential information in the ESS Emission Planning Reports, and exclude preferential curtailment frameworks at that stage.

[7] INITIAL (APPLICATION, COMPLAINT, PETITION), 6/10/2019 (state.or.us).
[8] UM 2024, Order No. 19-271.
[9] UM 2024 Memo 10-01-21.pdf (state.or.us).
[10] Id.
[11] Staff Report for July 12, 2022, Public Meeting RM1.

The Commission rejected Staff's proposal on the basis that further policy guidance was needed regarding DA program caps, Provider of Last Resort (POLR) obligations, and the feasibility of preferential curtailment. The Commission recommended that Staff develop a revised proposal for these topics and request moving to a formal rulemaking after proposing additional rule language.

On September 1, 2022, Staff filed a straw proposal that enables preferential curtailment of certain DA customers, adds confidentiality protocols for ESS Emission Planning Reports, revises Staff's original non-bypassable charges language, and outlines criteria for considerations to expand DA program caps if applicable. Multiple parties submitted comments on Staff's straw proposal on September 15, 2022, including:

- AWEC
- Brookfield Renewable Trading and Marketing LLP (Brookfield)
- Climate Solutions and Green Energy Institute
- The Northwest and Intermountain Power Producers Coalition (NIPPC)
- Oregon Citizens' Utility Board (CUB)
- PacifiCorp (PAC)
- Portland General Electric (PGE)
- QTS Investment Properties Hillsboro (QTS)

Staff developed the final recommended rule language in Attachment A while considering the redlines and comments that parties submitted.

Summary of Staff's Revised Division 038 Rules and Parties' Input

The revised rule language in Attachment A includes changes to the following sections:

- Non-bypassable charges (860-038-0170)
- Preferential Curtailment (860-038-0290)
- HB 2021 utility and ESS labeling requirements (860-038-0300)
- ESS Emissions Planning Report (860-038-0405)
- Nondiscriminatory access to transmission and distribution (860-038-0590(3))

Staff has also included guidance for DA program caps outside of rules on pages eight through nine.

Non-Bypassable Charges

The proposed rule language contains modifications from multiple parties and Staff that represent greater consensus on the definition and criteria for non-bypassable charges. The definition now states that "Non-Bypassable Charges are costs that are directed by the legislature to be recovered by all customers or charges that retail consumers served by electricity service suppliers otherwise may avoid by obtaining electric power through Direct Access that are determined by the Commission to be appropriate for recovery from all customers." A list of non-bypassable charges will still be developed in the contested phase.

NIPPC expressed desire for clarification in section (2), outlining concerns that the rule could imply that DA customers would pay for charges that are not "similarly borne by utility bundled service customers."[12] While it is correct that this rule only refers to DA customers, Staff does not intend for the Division 038 rules to create non-bypassable charges that are not similarly paid by utility customers. Staff notes that the Division 038 rules are specific to Direct Access in Oregon. Therefore, they are written in the context of DA customers. The criteria in subsection (1)(a)-(e) provides context in how charges are determined and reads as if all other utility customers are also paying the same charges. Additionally, the definition of "Non-bypassable Charges" in section (1) mentions "costs…recovered by all customers" which implies that DA customers are paying the same charges in a similar manner as other utility customers. The method of collecting and paying such charges is not outlined in this rule language and will require further determination in the contested phase. Staff does not view this language as precluding any specific collection method for non-bypassable charges, such as a surcharge, which NIPPC has previously proposed.

QTS expressed concern with section (2), requesting that a differentiation between Long-Term Direct Access (LTDA) and New Load Direct Access (NLDA) customers be included so as not to preclude the Commission from making different determinations for those customer segments.[13] Staff believes that the criterion in subsection (1)(c) and possibly other subsections can provide guidance in determining whether charges should be applied differently between these customer classes. Additionally, section (2) states that Non-Bypassable Charges must be paid by DA customers "as determined by the Commission" which provides for Commission discretion on this issue. Staff does not view this language as preventing the Commission from making determinations on NLDA and LTDA eligibility for certain charges, which can be examined further in the contested phase.

PGE and PAC raised concerns with subsection (1)(e), claiming that designating a charge as non-bypassable "in order to establish fair, just, and reasonable rates" does not necessarily protect against unwarranted cost shifting in this context.[14,15] Staff addressed this concern in the straw proposal, citing ORS 757.607 which states that "The Commission is charged both with establishing just, fair, and reasonable rates and preventing unwarranted shifting of costs to non-DA customers." For clarity, Staff has added "and prevent unwarranted cost shifting" to subsection (1)(e) to align with the statute and address cost shifts in this context.

Lastly, Staff has clarified the language in the definition of an Uneconomic Cost of Implementing a Public Policy Goal on page 18 of Attachment A by removing the word "through" after the word "avoided":

[12] Docket No. AR 651, NIPPC Comments on Staff Straw Proposal, at 2, (September 15, 2022).
[13] Docket No. AR 651, QTS Comments on Staff Straw Proposal, at 1, (September 15, 2022).
[14] Docket No. AR 651, PGE Comments on Staff Straw Proposal, at 2, (September 15, 2022).
[15] Docket No. AR 651, PacifiCorp Comments on Staff Straw Proposal, at 7, (September 15, 2022).

(73) "Uneconomic Cost of Implementing a Public Policy Goal" means the difference between the cost of implementing the public policy goal and the regulated costs that are avoided as a result of implementing the public policy goal.

Provider of Last Resort and Preferential Curtailment

Staff believes that preferential curtailment provides a workable option in many circumstances. Given the state of the energy industry and the difficulties IOUs will face implementing a reliable and just energy transition for cost-of-service customers, Staff believes that it is reasonable to adopt policies that encourage DA customers and ESSs to be responsible for their own reliability and lean into the efficiency and innovation that retail choice is supposed to capture. In Docket No. UM 2143, Staff plans to recommend requirements for an ESS to demonstrate resource adequacy (RA) through participation in a binding regional or state program. With this framework, Staff believes that enabling preferential curtailment better balances reliability and efficiency than relying on the IOU to acquire duplicative capacity resources in case a DA customer returns. Staff has included draft rules under OAR 860-038-0290 that direct the following:[16]

- IOUs will be able to preferentially curtail DA customers who return when their ESS cannot or will not serve them.
- An IOU must use any available market purchases or excess generation first before curtailing a customer.
- An IOU will collect a charge from the DA customer for the system upgrades if required to enable preferential curtailment.
- An IOU will not preferentially curtail if it is infeasible from a cost, engineering, or system reliability standpoint.
- In the scenario where curtailment is infeasible, the IOU will collect charges from the non-curtailable customer to invest in capacity for their potential return in a default event.

As noted in Staff's straw proposal, Staff believes that utilities can operationalize preferential curtailment given the curtailment requirements for qualifying facilities (QFs), the capabilities of demand response pilots like PGE's Dispatchable Standby Generation, and the deployment of significant distribution automation investments described in distribution system planning. Staff also sees preferential curtailment in POLR scenarios as consistent with the treatment of natural gas transport customers as outlined in Northwest Natural Gas Company's General Rules and Regulations, Rule 13.[17]

[16] For the official recommended rules, see Attachment A, OAR 860-038-0290.

[17] NWN General Rules and Regulations, Rule 13.

PGE and PAC raised multiple concerns and questions in response to Staff's proposal, [18] and requested an additional workshop and processes to discuss the preferential curtailment rules. Staff believes that many of the questions that PAC and PGE pose, especially the questions about defining specific terms, can be more effectively decided in the contested case phase where supporting evidence about the costs and system constraints can be evaluated. Staff appreciates the feedback from PGE and PAC that focuses on more detailed aspects of these rules. However, Staff believes that this language provides a general policy framework at this stage that can be refined with the necessary technical details in a contested case.

NIPPC and Brookfield questioned whether the rules would limit a customer from avoiding curtailment by taking service from another ESS if their primary ESS cannot serve their load. Staff does not believe this is a viable option in all potential POLR situations and thus curtailment or backstop capacity would still be required to fully mitigate risk to the system.

NIPPC also identified that the term "transition charge" is already defined in the Division 038 rules and therefore conflicts with Staff's rule in section (4). Staff has removed "transition charge" from the language and added NIPPC's suggestion, "reasonable charge." The set of factors that determine whether a charge is "reasonable" can be further defined via Commission order in future processes.

If it is infeasible to preferentially curtail a customer, NIPPC recommended that a DA customer demonstrating resource adequacy should not be subject to a charge for utility capacity investment. Staff has not included this revision, as the function of a day-ahead RA program may not mitigate all risks associated with a returning customer in some circumstances.

Staff's final edit is the removal of the term "transmission system upgrades" from section (4), as Staff agrees with NIPPC that it is likely that any upgrades required for curtailment would be at the distribution level and not the transmission level.[19] The rule now only refers to "system upgrades".
AWEC generally stated support for the idea of preferential curtailment but opposed Staff's proposal that the DA customer shall pay a charge for any necessary distribution system upgrades to operationalize curtailment. Staff maintains that if the DA customer is not responsible for those costs it would inappropriately shift costs onto other retail customers. Therefore, Staff continues to recommend that section (4) is included in the rule language. AWEC does propose an alternative curtailment strategy, where customers must self-curtail or face significant financial penalties.[20] This would not require the installation of system upgrades but Staff has concerns that it would still

[18] Docket No. AR 651, PGE Comments on Staff Straw Proposal, at 2-5, (September 15, 2022); Docket No. AR 651, PacifiCorp Comments on Staff Straw Proposal, at 1-7, (September 15, 2022).
[19] Id.
[20] Docket No. AR 651, AWEC Comments on Staff Straw Proposal, at 3, (September 15, 2022).

result in potential risk to the system and may not be applicable in all potential POLR situations. However, Staff believes that the current language does not expressly prohibit contractual curtailment if deemed appropriate in the contested phase.

Please note that in OAR 860-038-0590-3, Staff has included an exclusionary phrase to indicate that the requirements of Section 0590 do not apply in the instance of preferential curtailment. Staff believes this modification is required since the concept of knowingly curtailing one customer over another directly contradicts Section 0590's designation for non-discriminatory access to transmission and distribution for all retail customers.

Utility and ESS Labeling Requirements

Staff included language directed by HB 2021 stating that "an electricity service provider must post a summary for the aggregated energy supply mix and associated emissions for the Direct Access load served in Oregon in the previous year." Parties generally agreed with this inclusion and Staff's view that some transparency still needs to exist by enforcing existing indicative pricing rules for an ESS. Staff notes the existing rule requires ESSs and utilities to provide a website to the Commission where they regularly post indicative pricing. This would also apply to posting the summary of an aggregated energy supply mix and will be enforced in the same manner. NIPPC and Brookfield suggested that the Commission specifies a date for compliance with this requirement in September or November of a given year. Staff has included that an ESS must post the summaries on November 15 to align with the posting date for indicative pricing.

ESS Emission Planning Report

Staff included additional language specifying which parties have access to confidential information via a modified protective order. Variations of this language were developed by NIPPC, CUB, and the environmental NGOs, and Staff believes the final product clarifies the review and engagement process while providing the necessary protections for ESS's competitive information. PAC raised concerns with these additions, stating that it is unclear how the utilities can verify remittance payments from the ESS under the rules.[21] Staff notes that these rules apply specifically to the ESS Emission Planning Reports and were not intended to regulate the methods of verifying ESS remittance to the utilities. Due to this specificity, the rules do not appear to preclude any verification or auditing methods for remittances, which are a separate issue outside the scope of this rulemaking.

PAC and PGE both expressed that the reports should be held to the same standard of public scrutiny as the utilities' Clean Energy Plans (CEP) discussed in Docket No. UM 2225. Staff does not interpret this rule language to hinder public engagement or transparency, rather, that it provides a clear path for parties to have access to information for verifying compliance and trajectory. To the extent possible, Staff will

[21] Docket No. AR 651, PacifiCorp Comments on Staff Straw Proposal, at 9, (September 15, 2022).

continue to engage in discussions on this topic in conjunction with the progression of CEP requirements in UM 2225.

PGE, PAC, and the environmental NGOs continue to express concern with the initial reporting date not beginning until 2027 and the lack of time to evaluate continual and reasonable progress leading up to 2030.[22] Staff reiterates that the interpretation of HB 2021 and the nature of ESS' resource planning may create administrative process for ESS's and the Commission, but not result in a meaningful forward-looking reporting framework. Section 5(3)(a) of HB 2021 indicates a three-year forward estimate of emissions be included in the ESS compliance plans. Staff interprets the statute to mean that the three-year estimates should be projecting out to the time of compliance obligations. Therefore, an earlier reporting date than 2027 would show an incomplete trajectory toward the first compliance period and would require information that is not required by statute.

Staff proposed an alternative solution in which reporting covers more than a three-year outlook and begins earlier. However, Staff did not receive support for this proposal.

Direct Access Caps and Behind-The-Meter (BTM) Load Growth
Acknowledging the difficulty of proposing rule language on caps without supposing their existence, Staff includes the following criteria outside of rules to guide future Commission decisions about whether a program cap itself, or an expansion above a cap, is acceptable.

The Commission may preserve, adjust, or impose a cap if an increase in DA load will:

- Compromise system reliability
- Shift an unacceptable amount of cost to cost-of-service customers
- Pose undesirable long term financial impacts to the electric system or cost-of-service customers
- Pose other unmitigated risks to cost-of-service customers

Parties generally were agreeable to the above criteria but requested some reframing. PGE, for example, recommended that the party requesting the expansion or removal of a cap has the burden of proof to demonstrate that no unwarranted cost shifting, or reliability impacts will occur.[23] Staff continues to recommend the above wording under the assumption that it is more straightforward to prove that cost shifts and risks exist rather than prove they do not. AWEC opposed including this guidance for DA caps in rule but agrees with Staff that it is an appropriate policy position to guide contested case arguments.

[22] ORS 469A.420 (3)(d) requires the Commission to review this report to determine, "whether the electricity service supplier is making continual and reasonable progress toward compliance with the clean energy targets."
[23] Docket No. AR 651, PGE Comments on Staff Straw Proposal, at 7-8, (September 15, 2022).

Staff believes that its identified criteria are similarly applicable to BTM load growth. If cost shifting, risk, and reliability concerns can be addressed through transition charges or resource adequacy, load growth could be accommodated without posing significant risk.

In the event that DA caps are deemed necessary in the contested case, Staff continues to support its original policy positions that recalculating caps at a regular interval would be necessary to account for shifting risk and load growth. Additionally, any petition to exceed a cap should follow a time-limited process open to all intervenors. Staff looks forward to further exploring these issues in the contested case phase.

Conclusion

Staff has engaged in a collaborative process to identify draft rules that reflect key policy principles for contemporary Direct Access issues. Staff recommends that the Commission Adopt Staff's recommendation on Direct Access caps and accept Staff's proposed OAR Chapter 860, Division 038 rules and move the AR 651 Direct Access Rulemaking to the formal stage.

PROPOSED COMMISSION MOTION:

Adopt Staff's policy guidance on Direct Access caps, open a formal rulemaking on Direct Access, and issue a notice of proposed rulemaking to amend and adopt Division 038 rules as included in Attachment A.

Docket No. AR 651