

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**AR 651**

In the Matter of

Rulemaking Regarding Direct Access Including  
2021 HB 2021 Requirements.

**PORTLAND GENERAL ELECTRIC  
COMMENTS ON STAFF'S UPDATED  
PREFERENTIAL CURTAILMENT  
PROPOSAL**

**INTRODUCTION**

Portland General Electric Company (PGE) submits these comments in AR 651 *Rulemaking Regarding Direct Access Including HB (House Bill) 2021 Requirements* in response to the Public Utility Commission of Oregon (Commission or OPUC) Staff's notice for stakeholder comments circulated January 18, 2023.<sup>1</sup> Staff's notice invited written comment on the topics discussed at the January 6, 2023, workshop on preferential curtailment as a solution to provider of last resort (POLR) risk.

Staff first circulated proposed rules on preferential curtailment as part of their September 1, 2022, *Division 38 Direct Access Straw Proposal*.<sup>2</sup> PGE's response to that rule language welcomed the clarifications and sought further details on preferential curtailment operationalization.<sup>3</sup> At the October 4, 2022, Regular Public Meeting the Commissioners requested stakeholders work with Staff to facilitate a workable solution regarding utility POLR responsibilities. PGE then submitted comments on the infrastructure and policy implications of preferential curtailment following discussions at the November 2, 2022, OPUC Workshop.<sup>4</sup> Staff most recently circulated an updated preferential curtailment proposal ahead of the January 6, 2023, workshop.<sup>5</sup>

PGE remains committed to working collaboratively with Staff and stakeholders on POLR risk but has strong concerns about the use of preferential curtailment as a potential tool: moral concerns regarding the potential disconnection of critical infrastructure such as hospitals, and economic concerns relating to disconnecting industries that could have state-wide financial

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<sup>1</sup> AR 651, OPUC, Stakeholder Comments (Notice), January 18, 2023, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah145817.pdf>

<sup>2</sup> AR 651, Staff's Straw Proposal, September 1, 2022, pp 5-6, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah164623.pdf>

<sup>3</sup> AR 651, PGE Comments on Staff's Division 38 Direct Access Straw Proposal, September 15, 2022, pp 2-5, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac161242.pdf>

<sup>4</sup> AR 651, PGE Comments on Staff's Preferential Curtailment Proposal, November 18, 2022, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac165834.pdf>

<sup>5</sup> AR 651, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

impacts. PGE supports potentially outlining the concept of preferential curtailment rules but delaying implementation until the relevant fact-based issues have been explored and resolved as part of the UM 2024 contested case proceeding followed by the necessary tariff filings and plans for implementation.

These comments respond to Staff's updated proposed rules for preferential curtailment (circulated December 16, 2022) and the agenda for the workshop of January 6, 2023.<sup>6,7</sup> Following an exploration of the key components of Staff's proposal (curtailable customers, non-curtable customers, self-curtable, duration of preferential curtailment risk, distinction of POLR from resource adequacy, critical facilities and the duration of disconnection, potential for demand response) these comments discuss the main workshop questions (election windows, curtable customer treatment pre-operationalization, definition of excess generation, process to return to direct access) and provide PGE's perspective on contested case determinations (including methodology for curtailment upgrade charges, customer size thresholds, level and structure of caps). PGE looks forward to continuing to collaborate constructively on this topic.

## I. STAFF'S UPDATED STRAW PROPOSAL

### 1. Caps are necessary for both non-curtable and curtable direct access customers

Staff's proposed rules would create two types of direct access customers categorized by how they are treated in order to ameliorate utility POLR risk: curtable and non-curtable.<sup>8</sup> While Staff discuss a "potential cap on non-curtable customers" their proposal remains silent on a cap for curtable customers.<sup>9</sup> Caps remain an essential tool to help mitigate the potential for cost shifting and unplanned load shifts as they place limits on "unknown and unknowable" system impacts, and must be in place for both curtable and non-curtable direct access customers.<sup>10</sup> Even if preferential curtailment were operationalized, a cap on curtable customers would be necessary to limit the amount of load that could return on short notice to emergency default service.<sup>11</sup>

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<sup>6</sup> AR 541, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

<sup>7</sup> AR 651, PUC Staff, Workshop Agenda January 6, 2023 (circulated December 29, 2022), available at: <https://apps.puc.state.or.us/edockets/Docket.asp?DocketID=23063&Child=action>

<sup>8</sup> AR 541, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p1, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

<sup>9</sup> AR 541, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p1, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

<sup>10</sup> UE 335, Order No. 19-128, available at: <https://apps.puc.state.or.us/orders/2019ords/19-128.pdf>

<sup>11</sup> PGE currently effectuates POLR per [Schedule 81](#) (Nonresidential Emergency Default Service): a direct access customer no longer receiving service from its ESS and returning to PGE without the required notice is charged 125% of ICE-Mid-Columbia (Mid-C) Firm Index plus 0.306 cents per kWh for wheeling, plus line losses. After five business days (or before) the customer is moved to PGE's standard offering (daily market pricing) and has the option of seeking a new ESS.

Furthermore, POLR is but one of many risks associated with the direct access program that have been investigated since the start of UM 2024 in 2019.<sup>12</sup> A reduction in POLR risk does not mean the direct access program is risk-free. Non-bypassability of costs (directed by the legislature or Commission to be recovered from all customers) still needs to be defined in rules and applied as part of a contested case proceeding to develop a list of non-bypassable charges.<sup>13</sup> In addition, the Commission (UM 2143) and the region (through the Western Power Pool – Western Resource Adequacy Program) continue to work to resolve resource adequacy issues while decarbonizing the system in line with state policy goals.<sup>14, 15</sup> As PGE has stated before, it is imperative that direct access program caps remain in place. All load serving entities under the Commission’s jurisdiction - electricity service suppliers (ESSs) and investor-owned utilities (IOUs) - will need to demonstrate they are planning to have adequate resources – generation, efficiency measures, and demand-side measures – to serve loads across a wide range of conditions with a sufficient degree of reliability while meeting state greenhouse gas reduction requirements.<sup>16</sup>

## 2. Curtailable customers should not have the ability to self-curtail

The ability of a direct access customer to “self-curtail” was included as part of Staff’s updated preferential curtailment proposal.<sup>17</sup> This concept originated with the Alliance of Western Energy Consumers’ (AWEC) proposal that “preferential curtailment could be effectuated through contractual means rather than physical” requiring direct access customers to “self-curtail their load or face substantial financial penalties.”<sup>18</sup> PGE does not support the idea that customers should be able to self-curtail in response to a potential energy emergency. There is no guarantee that a customer capable of self-curtailment would respond in time and in a manner that would avoid negative system impacts. Curtailment of potentially significant amounts of load in an energy emergency should not be left to the discretion of a sub-set of customers, it should be controlled by the utility responsible for ensuring reliability. While “substantial financial penalties” could be an incentive for a customer to self-disconnect, if penalties are actually incurred then cost-of-service customers could already have been subject to a deterioration in service. Extremely strict conditions will have to be implemented as part of a contested case proceeding if self-curtailment is successfully pursued as part of the solution to addressing POLR risk.

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<sup>12</sup> UM 2024, OPUC, Scoping Docket and Proposed Issues List, December 3, 2019, available at: <https://edocs.puc.state.or.us/efdocs/HAK/um2024hak145357.pdf>

<sup>13</sup> AR 651, OPUC, Order 23-364, October 7, 2022, Appendix A pp 3-4, available at: <https://apps.puc.state.or.us/orders/2022ords/22-364.pdf>

<sup>14</sup> UM 2143, Investigation into Resource Adequacy in the State, <https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=22698>

<sup>15</sup> (N)WPP Resource Adequacy Program – Detailed Design, p 140, July 2021, available at: [https://www.westernpowerpool.org/private-media/documents/2021-08-30\\_NWPP\\_RA\\_2B\\_Design\\_v4\\_final.pdf](https://www.westernpowerpool.org/private-media/documents/2021-08-30_NWPP_RA_2B_Design_v4_final.pdf)

<sup>16</sup> See AR 651, PGE, Comments on Staff’s Division 38 Direct Access Straw Proposal, September 15, 2022, p7, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac161242.pdf>

<sup>17</sup> AR 651, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p1, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

<sup>18</sup> AR 551, Comments of The AWEC, p 3, September 15, 2022, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac153535.pdf>

Furthermore, utilities would need to control the reconnection of these direct access loads to avoid re-triggering or exacerbating an energy emergency.

3. The duration a customer is exposed to potential preferential curtailment risk should be explored as part of a contested case

Staff's proposal also suggests that "[...] upon any unplanned return to utility service [curtailable customers] would be able to be curtailed at any point during the time equal to the utility's notice of return period if excess generation or retail purchases are not available to serve them."<sup>19</sup> This is a significant expansion in Staff's consideration of the extent of POLR risk. Staff's earlier proposed Division 38 rule language from March 2022 did not alter the language around emergency default service.<sup>20</sup> Oregon Administrative Rule (OAR) currently states 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<sup>21</sup> [...] Unless otherwise directed by a nonresidential consumer, an electric company must move an emergency service consumer from emergency default service to standard offer service within five business days of the nonresidential consumer's initial purchase of emergency default service. This provision does not limit a consumer's right to return from emergency default service or standard offer service to direct access."<sup>22</sup>

PGE has been clear that it currently effectuates POLR requirements through emergency default service.<sup>23</sup> In response to HB 3633 (2001) PGE designed emergency default service to "provide back-up service for any direct-access customer that loses its ESS and has not provided PGE with the notice required to receive service under the applicable standard offer service rate."<sup>24</sup> PGE proposed to provide this back-up service on an "as available" basis to "prevent a returning direct access customer from causing PGE to curtail service to other customers who did not go to direct access [...] other customers should not be required to suffer rolling outages to provide emergency

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<sup>19</sup> AR 651, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p1, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

<sup>20</sup> AR 651, Staff's Proposed Division 38 Rule Language, March 23, 2022, p1, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah16043.pdf>

<sup>21</sup> OAR Division 38 Direct Access Regulation, 860-0380-005 Definitions for Direct Access Regulation, (26) Emergency Default Service, available at:

[https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID\\_OARD=qZKFqkzPyrv9MuNT7X0vL\\_TJI\\_IJfdnpCRX8TTbHSyC3CNIhuSAIr!-348175955?selectedDivision=4052](https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=qZKFqkzPyrv9MuNT7X0vL_TJI_IJfdnpCRX8TTbHSyC3CNIhuSAIr!-348175955?selectedDivision=4052)

<sup>22</sup> OAR Division 38 Direct Access Regulation, 860-0380-0280 Default Supply, (6), available at:

[https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID\\_OARD=qZKFqkzPyrv9MuNT7X0vL\\_TJI\\_IJfdnpCRX8TTbHSyC3CNIhuSAIr!-348175955?selectedDivision=4052](https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=qZKFqkzPyrv9MuNT7X0vL_TJI_IJfdnpCRX8TTbHSyC3CNIhuSAIr!-348175955?selectedDivision=4052)

<sup>23</sup> AR 651, PGE, Comments on Staff's Straw Proposal, February 14, 2022, p 9, available at:

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

<sup>24</sup> UM 115, Order No. 01-777 p38, issued August 31, 2001, available at:

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

default service or pay for standby resources for direct access customers.”<sup>25</sup> Staff noted at the time that “[b]ecause PGE remains the [de facto] *provider of last resort* within its service territory [...] the company is obligated to provide safe and adequate service to all customers within its service area” [emphasis added].<sup>26</sup> The Commission resolved that “customers who choose direct access should not be limited to default service on an “as available” basis.”<sup>27</sup> Early in the informal rulemaking phase, PGE welcomed Staff’s proposal that emergency default service “shall be designed to mitigate or avoid cost shifting” and we still see this as a key component of addressing POLR risk.<sup>28</sup>

PGE currently acts as POLR by providing emergency default service to direct access customers that give less than five business days’ notice to take advantage of that service option. The customer on emergency default service is then moved onto the standard offer (daily market rate) or chooses to return to direct access within five days. Staff are proposing to expand POLR risk to the time a customer spends on the standard offer and waiting out their binding notice of return. Customers enrolled in long-term direct access (minimum five-year option) must provide at least two years notice to return to cost-of-service if they elected the service in 2013 or earlier (Enrollment Periods A-L), or three years notice if enrolling from 2014 (Enrollment Period M onwards).<sup>29</sup> Shifting the focus of POLR risk from a ten-day period (five days’ notice and five days on emergency default service) up to three years is a significant policy shift that could have unintended consequences that will need to be explored as part of a fact-based process. In addition, a field test exploring the efficacy of preferential curtailment infrastructure should be considered before the policy is adopted more broadly. PGE recommends that the duration a customer be subject to potential preferential curtailment to mitigate POLR risk should be part of a contested-case proceeding.

#### 4. Provider of last resort responsibility and resource adequacy planning are distinct

PGE has previously noted that Staff have proposed allowing direct access customers (potentially non-curtable customers) to avoid a potential POLR capacity charge if their ESS is resource adequate.<sup>30</sup> Since the outset of this investigation, PGE has articulated that planning for resource

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<sup>25</sup> UM 115, Order No. 01-777 pp38-39, issued August 31, 2001, available at:

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

<sup>26</sup> UM 115, Order No. 01-777 p39, issued August 31, 2001, available at:

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

<sup>27</sup> UM 115, Order No. 01-777 p39, issued August 31, 2001, available at:

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

<sup>28</sup> AR 651, INFORMAL PHASE: Staff’s Announcement for the January 26, 2022 Workshop, January 12, 2022, p 3 retrieved from <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah152631.pdf> p3

<sup>29</sup> For example, PGE Schedule 485, Large Nonresidential Cost-of-service Opt-Out (201-4,000kW), Effective for Service on or after January 2023, available at:

[https://assets.ctfassets.net/416ywc1laqmd/1TbkHDFrg0Z8OR6FeMsagH/4472b0023ccbdb09fc64a5ba41518b54/Sc hed\\_485.pdf](https://assets.ctfassets.net/416ywc1laqmd/1TbkHDFrg0Z8OR6FeMsagH/4472b0023ccbdb09fc64a5ba41518b54/Sc hed_485.pdf)

<sup>30</sup> AR 651, PGE Comments on Staff’s Preferential Curtailment Proposal, November 18, 2022, p7, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac165834.pdf>

adequacy and POLR responsibilities are distinct.<sup>31</sup>As discussed above, the POLR construct is rooted in PGE supplying power to a customer that unexpectedly returns to default service in the event their ESS fails. However, resource adequacy is the result of intentional planning not unexpected actions: it is a forward-looking mechanism to ensure that adequate resources are available to meet the system’s needs under a variety of scenarios. A state-level resource adequacy framework could not establish a mechanism by which PGE could plan to backstop the energy needs of a direct access customer to address the risk that its ESS fails. The risk of an ESS failing is currently captured by the utility role as POLR and is distinct from resource adequacy planning, requiring distinct and additional solutions.

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

PGE still has concerns with allowing critical facilities the option of installing preferential curtailment infrastructure.<sup>32</sup> Staff attempted to assuage our concerns in their updated proposal, explaining that “a hospital is required to have emergency power facilities that are tested monthly” and “health facilities focus on thorough emergency preparedness plans for disasters to ensure emergency power will be available.”<sup>33</sup> PGE acknowledges that critical facilities should have heightened emergency preparedness, but it is a different question – and a moral one – whether PGE should be required to disconnect a critical facility in an energy emergency to protect the supply of cost-of-service customers due to the failure of an ESS.

PGE’s current Short Term Curtailment Operating Plan contains the steps for implementing rotating outages (“emergency curtailment”) to protect the “performance, integrity, or stability” of the electrical system in an energy emergency, but PGE excludes “[f]acilities deemed necessary to public health, safety, and welfare” from the rotating outage.<sup>34,35</sup> To the extent rules go forward allowing critical facilities to adopt the risk of being preferentially curtailed, PGE recommends there should be strict conditions around the demonstration of sufficient back-up generation. The amount of time a preferentially curtailed direct customer could be disconnected, and hence the amount of back-up generation a critical facility would need, is likely a fact-based issue that would need to be explored as part of a contested case.

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<sup>31</sup> UM 2024, PGE Opening Comments, March 16, 2020, p 11, available at: <https://edocs.puc.state.or.us/efdocs/HAC/um2024hac154125.pdf>

<sup>32</sup> AR 651, PGE Comments on Staff’s Preferential Curtailment Proposal, November 18, 2022, pp5-6, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac165834.pdf>

<sup>33</sup> AR 651, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p2, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

<sup>34</sup> PGE, Rule C – Conditions Governing Customer Attachment to Facilities B. Short Term Emergency Curtailment, C-2, April 24, 2020, available at: [https://assets.ctfassets.net/416ywc1laqmd/5SfZZI4LC1xf9xctCK3Aqr/efcf1b7799f0f10e40863b2141faf54b/Rule\\_C.pdf](https://assets.ctfassets.net/416ywc1laqmd/5SfZZI4LC1xf9xctCK3Aqr/efcf1b7799f0f10e40863b2141faf54b/Rule_C.pdf)

<sup>35</sup> List of critical facilities: 911 centers; electric infrastructure; emergency media; emergency operations centers; flood control facilities; hospitals; transportation; waste-water; water supply.

6. Demand response is a separate policy and technology issue to preferential curtailment Staff proposes that preferential curtailment infrastructure could be further utilized as a “resiliency and grid flexibility” tool, suggesting “[c]urtailable customers may avoid or reduce such [curtailment related system upgrade] charges, or be compensated by an electric company if the curtailable customer agrees to participate in a demand response or capacity program to support electric company operations.”<sup>36</sup> PGE fully supports voluntary demand response as an economic resource that can be relied upon in aggregate to contribute to resource adequacy; however, demand response technology is distinct from that necessary to remotely disconnect a customer on a time frame required to respond to an energy emergency. PGE has previously discussed the potential in-front-of-the-meter technologies that would be necessary to effectuate preferential curtailment in order to address POLR risk.<sup>37</sup> These remote disconnection technologies would differ according to service voltage (transmission, primary, secondary) and the location of the direct access customer’s meter (overhead or underground).<sup>38</sup> Demand response requires customers install system controls on their side of the meter in order to be able to respond to signals to vary load and are a different (or additional) set of equipment than that required for mandatory preferential curtailment in an energy emergency. In addition, it is likely that a direct access customer’s ESS would need to have the demand response program, not the utility. Further delineation of these technologies is likely to be fact-based and would need to be part of a contested case proceeding.

## II. QUESTIONS DISCUSSED DURING THE WORKSHOP OF JANUARY 6, 2023

This section addresses comments raised as part of the agenda for the workshop of January 6, 2023.<sup>39</sup>

### 1. Election windows: timing for new and legacy customers to opt for curtailment

Staff have proposed that “[d]uring the annual election window, customers opting for long term DA [direct access] service would also need to elect if they will be curtailable. Legacy DA customers would make the election in the first election window after these rules are codified.”<sup>40</sup> If new direct access customers elected to install preferential curtailment infrastructure during the September window it is highly unlikely that the necessary electrical engineering assessments,

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

<sup>37</sup> AR 651, PGE Comments on Staff’s Preferential Curtailment Proposal, November 18, 2022, pp3-4, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac165834.pdf>

<sup>38</sup> AR 651, PGE Comments on Staff’s Preferential Curtailment Proposal, November 18, 2022, p4, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac165834.pdf>

<sup>39</sup> AR 651, PUC Staff, Workshop Agenda January 6, 2023 (circulated December 29, 2022), available at: <https://apps.puc.state.or.us/edockets/Docket.asp?DocketID=23063&Child=action>

<sup>40</sup> AR 651, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p1, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

equipment procurement, installation, and testing could be accomplished before the customer adopts direct access the following January. As discussed above, the remote disconnection technologies necessary to operationalize preferential curtailment will be highly customer specific and could take considerable time to install, for example but not limited to, if the customer's meter is located underground.<sup>41</sup> So, while rules could potentially address when a customer is eligible to elect preferential curtailment, the time required to install the various pieces of equipment will be fact specific. In addition, eligible direct access customers will need sufficient time to be educated on the implications of preferential curtailment before they are able to make an informed decision during an election window.

2. Treatment of customers who opt for preferential curtailment prior to operationalization

Direct access customers that opt to be preferentially curtailed should be treated as a non-curtailable customer (for purposes of the direct access program, including caps) until the infrastructure has been successfully installed and tested. This is the only way to ensure that preferential curtailment meaningfully reduces POLR risk.

3. Proposed definition for “excess generation” serving curtailable customers

Staff's updated proposed rules state:

“If an ESS is no longer providing service, the electric company must make best efforts to serve a returning curtailable consumer with market purchases or the electric company's excess generation. Excess generation must be generation that is beyond any requirements to serve cost of service load, to comply with reliability standards, or to meet contractual obligations related to contingency reserves.”<sup>42</sup>

PGE previously provided written comments on excess generation in November 2022, and appreciates Staff trying to address our concerns regarding generation in “excess” of load that could be necessary for reliability purposes, reserve requirements, regulatory requirements, contractual requirements (such as a capacity holdback in the Western Power Pool's Western Resource Adequacy Program's future Operational Program), or some other need.<sup>43</sup> PGE still supports consideration of a readily available definition of energy scarcity provided in the North American Electric Reliability Corporation's (NERC) description of the Energy Emergency Alert (EEA) levels used to communicate the condition of a Balancing Authority experiencing an energy emergency.<sup>44</sup> However, the actual definition of excess generation and the definition of “best

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<sup>41</sup> AR 651, PGE Comments on Staff's Preferential Curtailment Proposal, November 18, 2022, p4, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac165834.pdf>

<sup>42</sup> AR 651, Staff Division 38 Preferential Curtailment Rules Updated Proposal, December 16, 2022, p4, available at: <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah153923.pdf>

<sup>43</sup> AR 651, PGE Comments on Staff's Preferential Curtailment Proposal, November 18, 2022, pp4-5, available at: <https://edocs.puc.state.or.us/efdocs/HAC/ar651hac165834.pdf>

<sup>44</sup> NERC, EOP-011-1 Emergency Operations Attachment 1 Energy Emergency Alerts, pp 11-12, <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf>



efforts” is likely to be a fact-based issue that needs to be explored as part of contested case proceeding.

4. Process for a non-curtable customer to move to direct access upon return without sufficient notice

As discussed above, customers enrolled in long-term direct access must provide a minimum of two- or three-years’ notice to terminate their cost of service opt-out agreement and return to utility cost of service depending on their enrollment period and “[s]uch notices will be binding”.<sup>45</sup> Once a customer has submitted this notice of termination, whether they continue to receive service from their ESS or wait on the standard offer, the utility begins planning for their needs. When the customer has served out their binding notice of termination and is on cost-of-service, and remains on it for at least one year, only then are they able to begin the process (again) of electing direct access if they choose and will be subject to transition adjustments. PGE does not support allowing customers to rescind their notice of termination as it would create complex and unnecessary planning complications. The notice of termination issue is distinct from a utility acting as POLR. When a direct access customer returns to the utility at short notice they are placed on emergency default service for up to five days, after which they must be moved to the standard offer.<sup>46</sup> In this scenario the customer has not submitted a binding notice of termination and can negotiate with an ESS to return to direct access at any time.<sup>47</sup>

5. Clarification on contested case determinations

PGE supports Staff’s proposal that the methodology for determining curtailment upgrade costs, requirements for curtable customers (such as size), and level and structure of caps (on both non-curtable and curtable load) should be determined as part of a contested case proceeding.<sup>48</sup> In addition, and as discussed above, PGE supports the following topics also being determined as part of a contested case proceeding: the ability of, and requirements for, a direct access customer to be able to self-curtail; the duration of time a direct access customer whose ESS has failed would be exposed to the risk of preferential curtailment; the amount of time a preferentially curtailed direct access customer could spend disconnected from the grid, and hence the amount of back-up generation a critical facility would require if such direct access customers were eligible for this option; further clarification on the distinctions between preferential

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<sup>45</sup> For example, PGE Schedule 485, Large Nonresidential Cost-of-service Opt-Out (201-4,000kW), Effective for Service on or after January 2023, p5 available at: [https://assets.ctfassets.net/416ywc1laqmd/1TbkHDFrg0Z8OR6FeMsagH/4472b0023ccbdb09fc64a5ba41518b54/Sc hed\\_485.pdf](https://assets.ctfassets.net/416ywc1laqmd/1TbkHDFrg0Z8OR6FeMsagH/4472b0023ccbdb09fc64a5ba41518b54/Sc hed_485.pdf)

<sup>46</sup> OAR Division 38 Direct Access Regulation, 860-0380-0280 Default Supply, (6), available at: [https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID\\_OARD=qZKFqkzPyrv9MuNT7X0vLTJI\\_IzfdnpCRX8TTbHSyC3CN1huSAIr!-348175955?selectedDivision=4052](https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=qZKFqkzPyrv9MuNT7X0vLTJI_IzfdnpCRX8TTbHSyC3CN1huSAIr!-348175955?selectedDivision=4052)

<sup>47</sup> OAR Division 38 Direct Access Regulation, 860-0380-0280 Default Supply, (6), available at: [https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID\\_OARD=qZKFqkzPyrv9MuNT7X0vLTJI\\_IzfdnpCRX8TTbHSyC3CN1huSAIr!-348175955?selectedDivision=4052](https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=qZKFqkzPyrv9MuNT7X0vLTJI_IzfdnpCRX8TTbHSyC3CN1huSAIr!-348175955?selectedDivision=4052)

<sup>48</sup> AR 651, PUC Staff, Workshop Agenda January 6, 2023 (circulated December 29, 2022), available at: <https://apps.puc.state.or.us/edockets/Docket.asp?DocketID=23063&Child=action>

curtailment and demand response; the estimated time it would take to install the various permutations (service voltage, meter location) of preferential curtailment infrastructure; and the definition of excess generation. PGE therefore believes it is critical that implementation of preferential curtailment be delayed until the related and relevant fact-based issues have been explored and resolved as part of a contested case proceeding.

## **CONCLUSION**

PGE looks forward to Staff recirculating an updated POLR proposal after considering the feedback received from stakeholders in this round of comments.

Respectfully submitted this 3rd day of February 2023.

*/s/ Shay LaBray*

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Enclosures:

cc: Michael O'Brien