Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 ● FAX (503) 241-8160 ● com@dvclaw.com
Suite 450
1750 S Harbor Way
Portland, OR 97201

February 3, 2023

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: Docket No. AR 651

Dear Filing Center:

Please find enclosed the Comments of the Alliance of Western Energy Consumers in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Corinne O. Milinovich
Corinne O. Milinovich

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 651

In the Matter of Rulemaking Regarding Direct Access Including 2021 HB 2021 Requirements.	)	COMMENTS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS

I. INTRODUCTION

The Alliance of Western Energy Consumers ("AWEC") submits the following comments in the above-referenced docket regarding Staff's Preferential Curtailment Rules Updated Proposal ("Updated Proposal"), filed December 16, 2022. AWEC greatly appreciates and commends Staff's diligent efforts in leading this stakeholder process. AWEC agrees with many of the requirements in the Updated Proposal, but focuses its comments here on the few remaining areas of disagreement or uncertainty it has with the Updated Proposal in an effort to achieve consensus on the proposed rules.

II. COMMENTS

As noted below, although AWEC agrees with many aspects of the Updated Proposal, these rules should not be adopted until conclusion of UM 2024. Instead, at this time the important thing is that the Commission express its support for, and its intention to implement, the major components of the preferential curtailment rules, which AWEC sees to be the following:

1. Direct access customers should be grouped into two buckets – those that are "curtailable" and those that are "non-curtailable."

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242

2. There should, at a minimum, be a cap on the amount of "non-curtailable" load in a utility's long-term direct access program, though the level of that cap remains to be determined.

3. "Curtailable" customers must exceed a to-be-determined size threshold and be able to curtail their operations in a to-be-determined manner within a to-be-determined time frame.

4. "Non-curtailable" customers will be subject to a capacity charge from the utility if, and only if, they return to the utility's service with less than the required notice.

5. In the event of a supply emergency, "curtailable" customers will be curtailed before all other customers.

The Commission does not need to formally adopt the preferential curtailment rules now to accept these principles as guidance for the parties' advocacy in UM 2024. This will accomplish what AWEC understands is the primary objective of this rulemaking, which is to narrow and focus the issues in dispute in UM 2024 to the extent possible.

A. The proposed preferential curtailment rules should not become effective until conclusion of the contested case in UM 2024.

As currently drafted and proposed, AWEC understands that the preferential curtailment rules will become effective upon approval by the Commission and filing with the Secretary of State, which would occur before conclusion of the contested case process in UM 2024, or indeed, even before that process resumes. AWEC has considerable concerns with this order of operations. Instead, the preferential curtailment rules should take effect only upon conclusion of UM 2024.

As AWEC understands it, preferential curtailment is not intended to address an immediate concern with the utilities' direct access programs as they exist today (which are naturally constrained through the hard caps on the programs), but are rather a component of

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potentially broader changes to the utilities' direct access programs to be considered in UM 2024. Therefore, these rules should be implemented simultaneously with any such other changes instead of applied to the existing programs before they are considered holistically.

Additionally, preferential curtailment is a potentially significant change to these direct access programs of which current direct access customers should receive ample notice before becoming subject to it. AWEC expects that if these customers are required to choose whether they want to be "curtailable" or "non-curtailable" at the next direct access window following adoption of the rules, these customers will experience substantial confusion and frustration. Upon notice that the Commission is planning to implement preferential curtailment for direct access customers, some of these customers may even choose to return to bundled service, which requires a multi-year notice period. Without a compelling need to implement preferential curtailment immediately, AWEC strongly recommends that these rules be: (1) not be adopted in favor of the Commission articulating the principles identified above at this time; (2) adopted (with the modifications identified in these comments) but not filed with the Secretary of State until after UM 2024 concludes; or (3) provisionally adopted subject to the outcome of UM 2024, which could require the Commission to revisit these rules. At this time, the most important aspect of the preferential curtailment rules is that they help guide the litigation in UM 2024, not that they be implemented in practice.

B. Because it is unnecessary, the authority to establish a cap on non-curtailable direct access load in OAR 860-038-0290(3) should be removed.

OAR 860-038-0290(3) allows the Commission, in its discretion, to "establish a cap on non-curtailable direct access load." The rule does not, nor should it, specify the level of that

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cap, which would be determined in UM 2024. Assuming the requisite evidentiary support exists, it is already within the Commission's broad authority to establish a cap on non-curtailable load, and therefore OAR 860-038-0290(3) as drafted is unnecessary and could create confusion in the future as to why such a rule was adopted.

Although AWEC recommends that OAR 860-038-0290(3) be removed in its entirely for clarity and efficiency purposes, AWEC supports the concept of a cap on non-curtailable load. Instead of adopting a rule specifying that the Commission may implement such a cap, however, the Commission could simply state its intent to impose a cap on non-curtailable load in UM 2024 so that the parties to that docket can focus their attention on the appropriate size of that cap rather than whether one should be implemented or not.

C. The Commission should withhold a determination on how preferential curtailment is implemented until after the contested case.

Staff's proposed OAR 860-038-0290(4) states that "[a]n 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, using a Commission approved methodology. Consumers who elect to be curtailable will be considered non-curtailable until the system upgrades are implemented and curtailment is operational." As currently drafted, OAR 860-038-0290(4) seems to only contemplate physical, rather than contractual curtailment. Contractual curtailment, as AWEC has advocated for, achieves the same result of physical curtailment while avoiding unnecessary capital investment.

Addressing the potential for Demand Response ("DR") and to "further utilize curtailment as a resiliency and grid flexibility tool," Staff proposes the following language "as a

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1750 SW Harbor Way, Suite 450
Portland, OR 97201
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potential addition to the rule regarding curtailment-related system upgrade costs in OAR 860-038-0290(4)…'[c]urtailable customers may avoid or reduce such 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.'" Staff "believes this concept could be beneficial and deserves consideration in this process."

Language that supports a customer's ability to "avoid or reduce" charges to implement physical curtailment if the customer commits to a DR program is a step in the right direction. Nonetheless, at this time there is insufficient consensus among the stakeholders, and insufficient evidence supporting either physical or contractual curtailment, to implement either requirement in rules now. For instance, it is unclear what the cost to a customer would be to implement physical curtailment, and whether that cost is relatively uniform or could differ materially from customer to customer. It is possible that physical curtailment could act as an effective barrier to direct access participation, and the Commission should understand whether this is true or not before approving it. Similarly, the rules as drafted allow the utility to collect a "reasonable" charge for implementing physical curtailment, but do not specify how the reasonableness of this charge will be determined, such as through the review and approval process of a tariffed offering. Conversely, in response to AWEC's advocacy for contractual curtailment, some stakeholders have argued that contractual curtailment is insufficiently certain to be reliable. Whether this is true or not, however, has not been tested through the evidentiary process. Under these circumstances, deferring a decision on how preferential curtailment may be implemented is the most prudent option.

D. OAR 860-038-0290(5) is unclear.

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As proposed, OAR 860-038-0290(5) states that "[a]n electric company will not preferentially curtail non-residential direct access consumers that have elected to be non-curtailable during the election period, are infeasible to curtail, or whose curtailment would negatively affect the electric system's reliability." It is unclear what it means for a customer to be "infeasible to curtail," or when a customer's curtailment "would negatively affect the electric system's reliability," nor is it clear who makes those determinations and through what process. Until these terms and the determination process are clearly defined, it is not in the public interest for the Commission to adopt OAR 860-038-0290(5)

E. OAR 860-038-0290(6) appears to be duplicative of the emergency default service rule at OAR 860-038-0280.

OAR 860-038-0290(6) states that "[i]f 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." OAR 860-038-0280, however, already establishes the requirements for emergency default service, which apply to all direct access customers. Accordingly, the proposed rule appears duplicative. AWEC believes the proposed rule is unnecessary as the emergency default service rule is already sufficiently clear with respect to a party's obligations upon a direct access customer's return to the utility on an emergency basis. At a minimum, however, the proposed rule must be harmonized with OAR 860-038-0280 to avoid potential conflict or inconsistency.

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Telephone: (503) 241-7242

Although the rule as drafted may be duplicative, AWEC does believe that the rules should clarify that curtailable customers should only be curtailed after the transition period (assuming there still is one). This is because the customer will continue to pay for utility generation in transition charges and, thus, it should continue to be eligible for the benefits of this generation.

F. OAR 860-038-0290(10) is unclear as drafted.

As currently drafted, OAR 860-038-0290(10) states that "[i]f a non-curtailable consumer returns to the electric company's service on less than the time for 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 retail energy costs required to serve on less than notice of return." As drafted, this language is unclear. First, it is unclear what the "incremental capacity and energy costs" are or how they are calculated. Would the utility use an avoided cost calculation as it does to establish Qualified Facility pricing, or use the marginal capacity and energy costs from the cost of service study in its most recent rate case, or would it perform an updated calculation at the time the customer returns? Second, when the language applies the "greater of the incremental capacity and energy costs or retail energy costs," it is unclear why a customer would pay the greater of those two. A more logical approach would seem to be to require the returning customer to pay the emergency default service rate for energy plus a capacity charge. For simplicity and transparency purposes, AWEC recommends establishing this capacity charge equal to the utility's cost of capacity in the utility's avoided cost filings.

G. The concepts set forth in OAR 860-038-0290(11) require further discussion.

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OAR 860-038-0290(11) includes a requirement that customers pay transition charges. In full, the proposed rule states that "[i]f a non-curtailable consumer on an electric company's default supply option elects to return to direct access service during the period equal to the remaining time for notice of return, the consumer must pay transition charges that recover the electric company's costs of planning to serve that consumer." AWEC believes this concept needs further discussion and evidence in the contested case. It is not clear how these transition charges would be calculated, given that the customer would have only been on the utility's default service temporarily, nor is it clear that the utility will have, or should have, incurred any costs of planning to serve the customer if the customer retains the right to return to direct access service and is paying a capacity and energy charge to the utility while on default service.

III. CONCLUSION

AWEC appreciates the opportunity to comment on the Updated Proposal and looks forward to further engaging with stakeholders on these issues.

Dated this 3rd day of February, 2023.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Corinne O. Milinovich
Tyler Pepple
Corinne O. Milinovich
1750 SW Harbor Way, Suite 450
Portland, Oregon 97201
(503) 241-7242 (phone)
(503) 241-8160 (facsimile)
tcp@dvclaw.com
com@dvclaw.com
Of Attorneys for the
Alliance of Western Energy Consumer