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AR 651: Division 38 Preferential Curtailment Rules Updated Proposal

Parties to AR 651,

After reviewing the feedback in parties' comments and the workshop on November 2, 2022, Staff submits the updated proposal in Attachment A regarding rule language for preferential curtailment of Direct Access (DA) customers. Many of the updates in this proposal are the result of incorporating certain aspects of the framework that PacifiCorp and other parties discussed. Staff believes that these changes create a reliable and efficient provider of last resort (POLR) option that still mitigates the risks of returning customers with less reliance on duplicative charges. The main additions include:

- Direction for when a customer must elect to become curtailable or non-curtailable.
- A potential cap on non-curtailable DA load.
- Clarification that a utility's excess generation for serving returning customers refers only to generation that is beyond what is required for serving cost-of-service load, complying with reliability standards, or meeting contractual obligations such as contingency reserves.
- Clarifications on the duration that a customer is curtailable and/or the duration a customer must remain on default supply.

Curtailable Customers:

The proposed rules would create two types of customers with regards to how they are treated by a POLR: curtailable and non-curtailable. During the annual election window, customers opting for long-term DA 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. Curtailable customers would pay for system upgrades to operationalize their curtailment and, upon any unplanned return to utility service, 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. Parties previously noted that a customer could only be curtailable if it meets certain requirements, such as a size threshold or the ability to shed load in a short period of time. Determining these specific requirements requires discovery and investigation that should take place in the contested case. Staff notes that smaller DA customers may not meet these potential size thresholds or curtailment requirements, so a case-by-case waiver process should be considered based on a customer's ability to self-curtail, provide its own backup generation, or otherwise mitigate the POLR risks to the system.

Non-curtailable Customers:

Non-curtailable customers present unmitigated risk to cost-of-service customers if they return to the utility unexpectedly. To address this issue, Staff originally proposed a capacity backstop charge for the utility to plan for these customers. However, Staff agrees with many of the parties that a cap on non-

curtailable load could be a less costly tool to manage the risk that it poses. In the contested case, the Commission would determine a level for an overall cap so that non-curtailable load does not reach a cumulative amount that poses excessive risk in the event of an ESS default or emergency scenario. In addition to a cap, non-curtailable customers that return to the utility would be required to pay the greater of the incremental capacity and energy costs or retail energy costs required to serve them on default supply. During the time equal to the utility's notice of return period, the customer would remain on default supply while the utility plans to serve them. The customer may opt to return to direct access service during this time but must pay transition charges that recover all the costs required to plan for them. These safeguards, combined with a regional or state resource adequacy requirement, mitigate the impacts to cost-of-service customers in the event a DA customer returns.

Critical Facilities:

Parties raised questions about how certain DA customers should be treated under these rules if they are classified as a critical service to public health and safety. Staff notes that the Oregon Health Authority rules in OAR 333-515-0030 provide requirements for safety and emergency precautions. Specifically in OAR 333-515-0030(1)(d), a hospital is required to have emergency power facilities that are tested monthly.[1] Additionally, health facilities focus on thorough emergency preparedness plans for disasters to ensure emergency power will be available.[2] While not all health and safety facilities may have the same level of preparedness, basic requirements do exist that limit the risk of loss of power. Additionally, a waiver process could also be used for a critical facility to determine whether it is exempt from some or all of these rules based on the level of backup generation it has available and other factors.

Potential for Demand Response:

To further utilize curtailment as a resiliency and grid flexibility tool, Staff proposes the following language as a potential addition to the rule regarding curtailment-related system upgrade costs in OAR 860-038-0290(4):

Curtailable 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.

While proposals for demand response with New Load DA customers were eventually rejected in previous conversations regarding POLR, Staff believes this concept could be beneficial and deserves consideration in this process. Because this topic has not been introduced in the majority of the preferential curtailment discussions thus far, Staff has opted to not include the above language in the proposed rules in Attachment A at this time, but encourages stakeholder feedback. Additionally, Staff

[1] OAR 333-515-0030, available at: Oregon Secretary of State Administrative Rules.
[2] Fact Sheet No.10, Emergency Power for Hospitals, available at: EmergencyPowerforHospitals_PreparingforCascadia.pdf (oregon.gov).

notes that the rules as proposed in Attachment A do not inherently prohibit a utility from designing a demand response program that utilizes curtailment of these DA customers.

Next Steps:

The second workshop to discuss curtailment and POLR rules is currently scheduled for **January 6th.** An official meeting announcement will be circulated at a later date. Parties may always provide feedback on Staff's proposal prior to the workshop.

Scheduling for comments on the entire scope of AR 651 topics will be announced in January.

Thank you,

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Attachment A: Proposed Division 038 Preferential Curtailment Rules

All additions to the rule language since Staff's previous proposal are in blue font. Staff has only included the sections in the Division 038 rules relating to preferential curtailment.

860-038-0290
Preferential Curtailment

(1) Except as provided in sections (4), (5) and (6), each electric company shall provide preferential curtailment of New Large Load Program participants and long-term opt-out direct access consumers.

(2) During the annual election window, consumers electing to transition to direct access and current direct access customers will elect whether to be curtailable or non-curtailable in the event they return to emergency default service.

(3) The Commission may establish a cap on non-curtailable direct access load.

(4) 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, 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.

(5) An 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.

(6) 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.

(7) If a returning curtailable consumer is served through market purchases or excess generation, the consumer will be charged rates for that service as defined in OAR 860-038-0280 (3)(b) or OAR 860-038-0250.

(8) If an ESS is no longer providing service, and neither market energy nor excess generation is available, the electric company may preferentially curtail returning nonresidential direct access consumers of that ESS that elected to be curtailable.

(9) A curtailable consumer that returns to the electric company's service on less than the time for 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. This provision does not limit a consumer's right to return from emergency default service or standard offer service to direct access.

(10) If 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. The consumer must remain on default service for the remaining time for notice of return, except as defined in OAR 860-038-0290(11).

(11) If 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

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 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 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 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 made available to an

electric company and ESSs that are serving such load on at least a pro rata basis. An electric company shall 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 be developed to reasonably minimize imbalances and to meet the needs of the direct access market environment. The electric company shall 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 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 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 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 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 also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;

(e) The electric company's tariffs shall specify prices, terms, and conditions for scheduling, billing, and settlement. Other functions may be specified as needed;

(f) An electric company's tariffs shall 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 provide that unresolved disputes related to such retail access matters may be appealed to the Commission.

(4) If adherence to OAR 860-038-0590 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.