January 12, 2022

** a previous version of this document indicated that rule language was included. Staff notes that this proposal does not contain actual draft rule language and merely presents policy positions for topics within the scope of AR 651.

AR 651 Staff Straw Proposal

This straw proposal provides policy positions regarding AR651/UM 2024: Investigation into Long Term Direct Access Programs. Staff developed positions that address the revised scope of topics under AR 651.

Reporting and Regulatory

1. Publicly available pricing:
    - To maintain transparency, utilities and ESSs should continue to provide indicative pricing on their websites that gives potential DA customers information about transition costs. While potential DA customers may be sophisticated, there still should be a minimum level of transparency.
2. Caps and Behind the Meter (BTM) load growth
    - The Commission will set DA caps, if implemented, in the UM 2024 or other contested case process. The October 1, 2021 Memorandum requires discussion of firmness of caps. To the extent that caps are implemented in a future contested case, Staff proposes that overall direct access caps will be recalculated each year prior to the annual election window in order to determine availability under the cap. Caps would be updated to be responsive to the ongoing risks of the program.
    - Petitions to exceed the capacity cap will be examined through a 90-day process similar to what has been outlined for VRET programs in UM 1953.
    - Regarding BTM load growth, Staff views this issue as tethered to the existence and size of DA caps overall. Staff is amenable to accommodating BTM load growth assuming all risks, including cost-shifting concerns, are otherwise addressed through transition charges, Resource Adequacy, etc.

Non-bypassability

- Non-bypassable charges are those charges that may not be avoided by the transition to direct access.
- Staff proposes to define non-bypassable charges as costs that the legislature directs to be recovered by all customers as well as costs determined by the Commission to be associated with implementing public policy goals related to reliability, equity, decarbonization, resiliency, or other public interests.
    - Staff is open to including a list of conditions in the rule that make costs associated with a policy non-bypassable. For example, above-market costs associated with implementing public policy goals.

- In the contested case phase of UM 2024, the current list of non-bypassable charges will be determined, which will include consideration for types of charges associated with HB 2021 that cannot be avoided under HB 2021 Section 14.
- Non-bypassable charges should be allocated to a DA customer in the same method as a COS customer of similar size and load profile.

Provider of Last Resort

ESS participation in an RA program and also charging DA customers for POLR backstop capacity is duplicative. Based on the current NWPP program and anticipated state RA requirements, customer choice for RA/POLR options is not feasible or warranted. IOUs continue to have POLR obligations, and should seek to implement rates that are reflective of the cost of providing such service. A separate capacity charge for POLR obligations is not necessary because RA planning ensures adequate planning capacity.

- The assumption for ratemaking purposes is that an ESS demonstrating RA is sufficient to ensure capacity for a direct access customer in an emergency situation.
- Utilities may choose to preferentially curtail customers on emergency default service, but only if all other options have been pursued; including RA resources set forth for customer's load, other ESS or market options, any capacity sharing agreements, and generation from the utility's resource stack.
- Emergency default service rates shall be designed to mitigate or avoid cost-shifting.

HB 2021 ESS Reporting and Disclosure Requirements

1. Filing requirements:
    - All ESSs that are certified under ORS 757.649 and have sold electricity to DA customers in the state in the previous calendar year or have executed a contract to sell electricity to end users in the state within the following three calendar years are required to file a report.
    - Reports should be filed on or before June 1st every year to correspond with the DEQ emissions reporting deadline and the RPS compliance reporting deadline.
        - ESSs will begin reporting in 2027 (3 years prior to the first compliance target date)
        - ESSs will file the annual DEQ emissions report with the Commission on or before June 1 between 2023 and 2027.

2. Post-2027 filing contents:
    - Require use of a reporting template if one is adopted by the Commission.
    - Attach a copy of the DEQ emissions report.
    - Include the following analysis:
        - Checklist that shows how the ESS complied with the HB 2021 §5(3)-(4) and the Commission's administrative rule requirements related to the ESS HB 2021 looking report.
        - Summary of the specific resources, MWh generation from those resources, and emissions per MWh (MTCO2e/MWh) associated with serving Oregon Direct Access customers, and emissions from the previous calendar year that were reported to DEQ (and attached to the

forward-looking report).

  - Load Forecast for the next three years – aggregate across Oregon direct access customers.
  - Either require load resource balance consistent with a reliability metric adopted by the Commission or include a resource adequacy report identified in Docket No. UM 2143 if there is one adopted with 3 year or more outlook. (See 2021 §5(3)(c)(A) "reliable"). This requirement relies on decisions made under UM 2143 therefore a determination on this rule will not be made under UM 2024/AR 651.
  - Action plan that specifies the resources, including specified and unspecified market purchases, that the customer plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology.
  - 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. (See 2021 §5(3)(c)(A) "affordable")
  - A list of actions that can be taken to accelerate the rapid reduction of greenhouse gases at reasonable costs to Direct Access customers including but not limited to (See 2021 §5(3)(c)(B)):
    - Development of non-emitting dispatchable resources
    - Demand response offerings
    - Energy efficiency offerings
    - Onsite renewable generation
  - Reporting and disclosure will be designed such that competitively sensitive or trade secret information will be kept confidential to the extent permitted by Oregon law (e.g., load, generation, and cost data).
- **Outstanding questions for stakeholders**
  - How should the Commission verify that the ESS is likely to take those actions?
  - Should ESSs that serve customers in Pacific Power's service territory and Portland General Electric's service territory file separately for each utility?
  - How should the Commission monitor whether the cost estimates were off, if at all?

3. Report review process
   - Commission will approve compliance with HB 2021 §3 targets in a manner consistent with HB 2021 §5 and HB 2021 §8 for the previous year.
   - The Commission will also, via order, accept the §5(3) report if it includes the information requested in HB 2021 §5(3) and the Commission's administrative rule requirements related to the forward-looking report.
     - If the Commission determines that it will not accept the report, it will issue and order detailing the shortcomings and any requested analysis or considerations. The ESS must refile a report that remedies the deficiencies.

- Commission staff and interested persons may file written comments within 45 calendar days of the filing.
- 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 HB 2021 Section §5's requirement for continual and reasonable progress toward compliance with the clean energy targets set forth in HB 2021 §3.
- ESS must post a non-confidential version of the Section §5(3) report on website within 30 days of the Commission decision to accept the report (or not).
- ESS must provide information about its compliance report to its customers by bill insert or other Commission-approved method.
- **Outstanding questions for stakeholders**
    - Should the Commission determine compliance with the targets in HB 2021 §3 as required by HB 2021 §5(4) and accept the forward-looking report in HB 2021 §5(3) in the process or separate reports and orders?

4. Disclosure Language
    - ESS must post a summary of the aggregated energy supply mix and associated emissions for the DA 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 website must be updated annually and either included on or via a link on its indicative pricing website as required under OAR 860-038-0275.

For questions regarding this proposal or AR 651 processes please contact:

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