

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 25, 2020**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: August 13, 2020

TO: Public Utility Commission

FROM: Scott Gibbens

THROUGH: Bryan Conway and John Crider **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. UE 358/Advice No. 20-02 and ADV 1164/Advice No. 20-21)
PGE New Load Direct Access Queue and Waiver Request Management
Update and Update to Schedule 689 New Load Direct Access Program.

STAFF RECOMMENDATION:

Approve PGE's updated tariffs for Schedule 689, New Load Direct Access Program.

DISCUSSION:

Issue

Whether the Commission should approve PGE's updated Schedule 689 tariff for rates effective on and after September 9, 2020.

Applicable Rule

ORS 757.205(2) states that a public utility must file with schedules showing all rates, tolls, and charges all rules and regulations that in any manner affect the rates charged or to be charged for any service. ORS 756.040 requires the Commission to protect customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates, while balancing the interests of the utility investor and the consumer in establishing fair and reasonable rates.

OAR 860-038-0700 through OAR 860-038-0760, specify the requirements an electric company must adhere to in implementing a New Large Load Direct Access Program.

Analysis

Background

Commission Order No. 18-341 implemented rules regarding New Load Direct Access (NLDA) Programs following investigation of the issues in AR 614. As part of the Order, the Commission imposed a capacity cap on the program equal to six percent of weather normalized annual load in calendar year 2017.

PGE filed Advice No. 19-02 on February 5, 2019, to implement an NLDA program in compliance with the Commission's direction. Commission Order No. 19-103, submitted on March 22, 2019, suspended PGE's Advice Filing 19-02 and opened an investigation into issues related to NLDA docketed as UE 358. As a part of that Order, the Commission directed PGE to develop a non-binding queue that would allow customers to signify their interest in enrolling in PGE's pending NLDA program while parties investigated the issues.¹ Specifically, the Commission Ordered:

1. Portland General Electric is directed to develop a nonbinding queue for customers interested in the New Load Direct Access process during the pendency of the investigation.
2. Portland General Electric is directed to file in this docket no later than April 4, 2019, information describing the process for customer nonbinding queue participation.²

On April 4, 2019, PGE filed a letter outlining the Company's proposed process for establishing a customer queue in compliance with the Commission's order. The letter states that PGE would open enrollment to the queue on April 15, 2019, and would order customers in the queue based on the automatic time/date stamp of the email submitted by the customer indicating interest in signing up for the program.

On April 15, 2019, PGE received letters of interest from numerous customers expressing intent to sign up for the NLDA program. The total load of the customers was estimated to be many multiples the size of the cap for the program. This set up a scenario where some interested customers may require a waiver to the participation cap in order to enroll in the program.

On March 20, 2020, PGE filed a letter indicating steps it had taken to implement the enrollment process of the program following a meeting convened by Staff to discuss program implementation. In the letter, PGE defined the following:

¹ Order No. 19-103 at 1.

² Order No. 19-103 at 2.

1. The start of the one-year notification requirement, before a new load can be energized, began on April 15, 2019, with the creation of the current NLDA queue. Consequently, any load energized prior to April 15, 2020, is not be eligible for NLDA.
2. Once PGE tenders an NLDA contract, that customer will have ten (10) business days from the date of PGE's tender, to sign and return the contract to PGE, or the offer will be withdrawn.
3. Beyond the one-year notification period, a customer has up to one more year to energize the new service (for initial program participants, that's by April 15, 2021), or two years (for initial program participants, that's by April 15, 2022) if substation construction and/or substation upgrades, are required to provide the new service(the "Timely Energization Date"). Temporary power will not be considered "energization" for purposes of determining a Customer's Energization Date. Allowances will be made if delays in construction are outside the control of the customer, such as material delays, or other delays caused by PGE. Failure to meet the Timely Energization Date will result in automatic disenrollment from the NLDA program and termination of the New Large Load Cost of Service Opt-Out Agreement.
4. PGE will calculate, in demand (kW), the new load that is to be referenced in the NLDA Opt-Out Agreement ("Contracted Load") and used for purposes of determining any remaining capacity under the cap of the NLDA program, and such calculation will be based on the capacity of service the customer is currently requesting from PGE. PGE will design and construct facilities to serve the Contracted Load stated in the NLDA contract.
5. Following the sixtieth (60) month after energization of the new service, PGE will evaluate the actual load factor (LF) of the customer and apply it to the Contracted Load reflected in the original contract, to calculate energy in MWa. The remaining energy (MWa), beyond that used by Customer, will be added back to the program as capacity available under the cap.
6. A customer has sixty (60) days, from receipt of notification of their ineligibility for NLDA, to file a waiver with the OPUC in accordance with OAR 860-001-0000 et seq.

To date, the Commission has received a total of three waivers or intent to file for a waiver of one or more NLDA eligibility requirements; however Staff notes that other customers may request waivers in the future and be placed at the end of the queue.

The three waivers currently filed are docketed as UM 2062, UM 2070, and UM 2107. Docket UM 2107, a waiver request by Willamette Falls Paper Company, seeks a waiver of the energization requirement.³ Docket UM 2070 and UM 2107 require additional investigation and analysis prior to Staff making a recommendation on whether a waiver would be appropriate. Due to the fact that a significant portion of the cap is already subscribed, it is very likely that any subsequent interested customers will require a waiver of the participation cap prior to enrollment in PGE's NLDA program, regardless of the approval status of waivers ahead of them in the queue.

At the June 16, 2020, public meeting, Staff recommended that the Commission direct PGE to file updated tariffs which incorporate its queue management plan for NLDA customers. PGE filed compliance filing 20-21 on July 31, 2020, which includes tariff revisions to Schedule 689. Additionally, the Commission requested that Staff work with stakeholders to develop guidelines for Commission consideration when it is reviewing requests for waivers of NLDA program requirements. Staff held a waiver guideline workshop on August 4, 2020, and discussed potential waiver process steps and recommended Commission considerations for waivers with stakeholders.

Staff would summarily note that the stakeholders held a wide range of opinions. Some stakeholders raised concerns which Staff will further address below in the memo, other concerns may be raised in written comments in response to this Staff Report, or to the Commission at the public meeting. Although some parties generally felt that the elevated standard for waiver approval beyond what would be considered usual was unwarranted, no party to Staff's knowledge felt that the type of information required to address the concerns raised by the Commission was untenable.

The following discussion represents Staff's view of the appropriate Commission action while taking into consideration the viewpoint of other stakeholders.

PGE's Compliance Filing for Commission Order No. 20-202

On July 31, 2020, PGE filed compliance filing 20-21, docketed as ADV 1162. Staff has reviewed the Company's filing and finds that it complies with the Commission's direction regarding the inclusion of the queue management process in the Schedule 689 tariff. Staff recommends the Commission approve PGE's tariff. Staff notes that PGE's queue management process does not address the Company's process in the event the Commission grants a waiver to a customer. Depending on the Commission's determination on its waiver process, an explanation of the Company's process may be warranted in the tariff. However, Staff also notes that some stakeholders raised

³ Willamette Falls Paper Company's request for relief also includes "Granting any other such relief as the Commission deems necessary" which could potentially include a participation cap waiver depending on queue management.

concerns regarding PGE's methodology used to calculate the cap level. This determination could impact the need for an applicant to obtain a waiver prior to enrollment. In discussing the Commission's waiver request process with stakeholders, it became clear to Staff that PGE's queue administration and program rules need to be first addressed before parties can make any meaningful progress towards discussion of the Commission's waiver process.

Process for consideration of waiver requests

In Staff's memo for the June 16, 2020, Staff discussed the importance of two items related to consideration of waiver requests. The first was to ensure the cap waiver applications received by the Commission clearly articulate the merits upon which the Commission's judgement will be based. At the public meeting the Commission discussed some of the aspects for consideration of waivers; this memo and the subsequent discussion at the upcoming public meeting should further clarify the issues to be addressed by applicants in their requests. The second was to consider more extensive alternatives to the standard process which may make the decision criteria needed for the Commission and ultimately customers, available sooner. Staff expands on the previously provided list in this memo and provides recommended action based on the review of the issues and discussion with parties.

Application Requirements for Waiver Considerations

Staff's previous memo generally discussed the good cause standard, cost and risk shift potentials to increasing the cap, and benefits to the system. The Commission, during its discussion at the June 16, 2020, public meeting, provided further discussion of those considerations. The Commission generally noted that it maintained a "high-bar" for approval of waiver requests. Noting that the majority of the concerns which warranted the cap's implementation in the first place, continue to exist today, particularly due to the open nature of the investigation into long term direct access (UM 2024). Staff notes that it does not intend to come to any conclusory positions on those concerns as a part of this memo, and will let the record and analysis done in UM 2024 drive its position moving forward. Assuming that the Commission will not come to any conclusions regarding these issues until the conclusion of UM 2024, applicants must ensure they address all open concerns through their waiver request. Staff further notes that depending on the outcome of UM 2024, the requirements or necessity of the considerations below may change. This memo or any Commission determination made upon the waivers is intended to be non-precedential and more of an interim solution, pending the outcome of the issues in UM 2024. UM 2024 is meant to provide a more permanent solution to the issues surrounding direct access, and as a result even some of the costs assumed by direct access customers may change.

Resource Adequacy

One of the main concerns raised by PGE in both UE 358 and thus far in UM 2024 is that direct access participants do not contribute to resource adequacy (RA). PGE argues that because direct access customers do not contribute directly to resource adequacy, they are relying on subsidization from COS customers, thereby reducing the overall reliability of the system or causing COS customers to pay more for resource adequacy than they otherwise would need to. Other parties have argued that direct access customers may contribute to RA.

The merits of market purchases not backed by a specific physical resource, which rely on liquidated damages to ensure delivery, may or may not be sufficient for resource adequacy purposes. As it is an open issue, in the interim, Staff does not believe the waiver applicant should be permitted to rely on such contracts to address this issue. This means that a physical resource(s) or PPA, should be utilized to meet the customer's RA needs. Further, the applicant must address how this resource is sufficient to meet a peak load event, citing a defined metric like a five percent loss of load probability (LOLP).

There are further questions regarding how the Commission would verify the applicant's adherence and compliance with the resource adequacy showing, and whether or not the Commission or Staff would assume an oversight role to ensure a customer's RA contribution. Staff notes that this issue is anticipated to be investigated and resolved through UM 2024.

Capital Investment Avoidance

CUB argues in its opening comments for UM 2024 that direct access customers enjoy low marginal cost power because the market prices energy at a competitive price. The issue is that, based on CUB's belief, the market price does not reflect the fixed costs associated with renewable generation investment. COS customers are left to shoulder all of the fixed costs, while direct access customers enjoy the benefit of only paying for the low marginal costs of energy. NLDA customers do pay 20 percent of the fixed generation cost through Schedule 139 for five years, however CUB's argument applies to both NLDA and LTDA customers whose transition charges do not cover costs beyond five years. Thus, in order to address this concern, the applicant must discuss how it is paying its fair share for all of the costs associated with the power it receives.

Unknown Costs and Risk

This issue is inherently difficult to define and address and as such Staff makes no attempt to provide an exhaustive list, but provides some thoughts on a few concerns. Without a determination that unknown costs do not exist, the applicant must rely on the theoretical arguments underpinning new load direct access generally. One potential

reason the Commission included a percentage of the fixed generation transition adjustment for NLDA customers was to cover these unknown costs. Commissioner Thompson noted that a counter-factual comparison between a customer admitted into the NLDA program and one who otherwise departs the state for investment elsewhere may be a more appropriate comparison than viewing whether or not a customer who is on PGE's system or on a direct access tariff. In this sense, that line of thinking minimizes some of the concerns to some extent. The opportunity cost for lost contribution to the system is mitigated as well as the impact on the utility's long-term planning. If a customer is truly deciding between NLDA and going elsewhere, whether or not the utility is planning or should plan on the load is moot. Staff notes that planned expansions have long lead times and there is a necessity for the applicant to work with PGE to ensure distribution systems are in place means the decision to locate an investment likely occurs prior to the Commission's waiver decision. Although the Commission has previously stated it desires all risks to be addressed, the Commission set the cap based presumably on the risk associated with an average participant, if the waiver request demonstrates a below average risk profile for cost shifting, the Commission could reasonably determine that an expanded cap was appropriate. Put another way, if all applications had a lower risk than previously thought, the cap may have been made higher to begin with.

Benefits to the System

The Commissioners offered several thoughts on the benefit potential of a NLDA customer. Chair Decker noted that the applicant must go "above and beyond" what is traditionally asked for in consideration for direct access customers. This may include some arrangement or defined contribution to the grid or distribution system. The Commission also noted a consideration for furthering the state's carbon emissions goals and a reduction to GHG in the area. Staff noted in its June 9, 2020 memo that, "Value added grid services could include back-up power capability and reliability in the narrow sense of managing more and more intermittent power sources on the system. Specifically, utilizing battery back-ups, diesel generators, or gas generators, that can be incorporated with the system to provide benefits. This can reduce the need for duplicative resources and lower the overall cost for the system." As Commissioner Tawney noted, the expectation is not that the applicant provides these benefits as a gift, but are appropriately compensated for them. During the stakeholder workshop, Staff notes that parties generally believed that some or most of the types of benefits discussed thus far were achievable, but that the time required for negotiation and implementation may be extensive. Below Staff proposes a 60-day timeline for review of waiver applications, which may not be long enough to implement any benefit based proposal. Thus Staff encourages parties to consider these expanded timelines necessary for aspects which may extend beyond the Commission's review.

Summary

Staff agrees with the Commission that the standard to merit approval of a participation cap waiver should be high. The Commission set the cap based on the known and unknown information available at the time, and the status of the vast majority of that information has not changed, as the program is still in its infancy and we have not yet had the benefit of experience. Any applicant seeking a waiver request for the cap of the NLDA program should expect to address a number of concerns and provide benefits such that the Commission is confident that the risks of additional participation, particularly so early in the program when so little is known about how it will perform and what issues may arise, are outweighed by the benefits provided. In other words, the standard for a waiver should be in the public interest, net benefits in order to demonstrate good cause is shown. Staff notes that any applicant may raise any argument it views as having merit in a waiver application. This list of considerations is not meant to prohibit any arguments which may be based on unique circumstances, but is instead meant to clearly articulate the level and scope of issues that Staff believes warranted.

Commission Process for Waivers

As Staff noted above, there are currently three waiver requests pending before the Commission. The first waiver request, made by Willamette Falls Paper Company, is likely not a waiver request of the cap, and Staff's memo is largely only applicable to cap waivers. Based on the recently approved schedule of UM 2107, it is apparent that the Commission may not be able to make determinations on the waiver requests prior to participant's desired energization dates and maintain the positioning in the queue. Due to this, Staff recommends that the Commission come to a determination on the merits of each waiver request assuming that all other waivers of customers before the particular customer in the queue will be granted. This allows for participants with earlier energization dates to receive the determination they need from the Commission, and allows participants with later energization dates to seek waiver requests with potentially more information available to the Commission. In all circumstances, it allows customers to pursue waiver request determinations when they desire.

The Commission has set forth a determination level for waiver requests that addresses all of the concerns regarding cost-shifting and risk, and as such, the relative size of the already approved program should not play a major factor in its decision. If it does, the application has not addressed at least one risk, which ultimately means it should not be approved unless and until that risk is addressed. Staff further proposes a 60-day review process from application to presentation to the Commission at a public meeting. Based on the current energization estimates, an investigation is likely not in the customer's interest, so although Staff or the Commission may feel that an investigation is required

to come to a determination, Staff understands and believes it is reasonable if the customer requests a simple approval or denial during a public meeting process. This 60-day timeline will allow the applicants to identify the necessary filing deadline based on their need for a determination.

Conclusion

Staff does not make a proposed recommendation to the Commission regarding the Commission's waiver request process. It is apparent based on discussions with stakeholders that many questions remain. Staff believes that the Commission has built a solid foundation by which to continue to discuss the waiver applications. Staff believes that it would be pertinent for the Commission to listen to the stakeholders concerns, provide direction where applicable, and allow parties to continue to work towards an agreeable solution.

Staff further concludes that the Commission should approve PGE's Advice No. 20-21 for service rendered on and after September 9, 2020.

PROPOSED COMMISSION MOTION:

Approve PGE's updated tariffs for Schedule 689, New Load Direct Access Program, for service rendered on and after September 9, 2020.