

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 358

In the Matter of)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Advice No. 19-02, New Load Direct Access)
Program.)
_____)

**OPENING BRIEF
OF THE
OREGON CITIZENS' UTILITY BOARD**

November 14, 2019



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I. INTRODUCTION

A. Background and Procedural Posture

Pursuant to Administrative Law Judge (ALJ) Moser’s May 24, 2019 Prehearing Conference Memorandum, the Oregon Citizens’ Utility Board (CUB) hereby submits its Opening Brief in the above-captioned proceeding. In this proceeding, Portland General Electric Company (PGE or the Company) seeks Oregon Public Utility Commission (Commission) approval to implement its nascent New Load Direct Access (NLDA) program. Advice Filing No. 19-02—the subject of this docket—was submitted in response to the Commission’s Order No. 18-341 in Docket No. AR 614, which established the rules for NLDA program implementation.¹ PGE’s NLDA program would create an option for customers with new large loads to elect alternative service without

¹ UE 358 – PGE/100/Sims – Tinker/1, lines 7-12. The rules governing NLDA programs are codified at OAR 860-038-0700 through OAR 860-038-0760.

first subscribing to a cost-of-service (COS) tariff.²

B. *Summary of CUB's Issues*

PGE's NLDA program is before the Commission at this late stage in the proceeding primarily because of two new charges in the NLDA tariff that PGE believes will "prevent [COS] supply customers from bearing new, large load reliability risks."³ The proposed charges are the Resource Adequacy Charge (RAD) and the Resource Intermittency Charge (RIC). Both remain contested issues in this proceeding. The RIC "is a fee for additional capacity necessary due to energy supplier's practices of scheduling energy."⁴ This charge is the result of the Company's current practice of using COS capacity to serve Direct Access customers when an Energy Service Supplier (ESS) under schedules load.⁵ The RAD, meanwhile, "charges for the costs associated with planning for and securing the necessary capacity to support resource adequacy and effectuate PGE's reliability provider responsibility."⁶ This charge would ensure PGE has sufficient capacity to serve all loads—its responsibility as the administrator of its balancing authority—in the event NLDA load returns to COS before the standard notice requirements.⁷

As detailed in our testimony, CUB continues to support both the RIC and the RAD and believes that Direct Access customers should be required to pay for the capacity necessary for the operation of the grid.⁸ CUB believes the RIC and the RAD are

² *Supra*, note 1.

³ UE 358 – PGE/100/Sims – Tinker/10.

⁴ UE 358 – PGE/100/Sims – Tinker/10-11.

⁵ UE 358 – Staff/100/Gibbens/4.

⁶ UE 358 – PGE/100/Sims – Tinker/11.

⁷ UE 358 – Staff/100/Gibeens/4.

⁸ UE 358 – CUB/100/Jenks/2.

a reasonable solution to ameliorate the subsidization of Direct Access customers by COS customers. Importantly, all other parties to this proceeding—Staff of the Public Utility Commission of Oregon (Staff), the Alliance of Western Energy Consumers (AWEC), and Calpine Solutions (Calpine)—do not dispute that capacity issues surrounding PGE’s NLDA program, as well as its Long Term Direct Access (LTDA) program, exist and that regional resource adequacy is a concern.⁹ However, Staff, AWEC, and Calpine all recommend that the Commission reject PGE’s proposed RIC and RAD, and, instead, undertake a separate generic investigation to more fully explore issues related to the interplay of capacity procurement and NLDA and LTDA programs generally.¹⁰

To be clear, CUB supports such a generic investigation, and believes there is a benefit to receive input more broadly from all affected stakeholders to reach a creative solution. However, we also believe that the imposition of the RIC and the RAD to PGE’s NLDA program are necessary to ensure that unwarranted cost shifting does not occur.¹¹ CUB stresses that Commission action in this proceeding would not preclude the ability for parties and the Commission to implement alternative solutions to the capacity issue in a subsequent proceeding. The UM 2024 LTDA investigation is a proper proceeding to address issues related to capacity and the subsidy provided to Direct Access customers by COS customers.

In the interim, CUB agrees with Staff and Calpine that the NLDA program should not be delayed while other policy issues are addressed in a subsequent proceeding.¹²

However, we believe the NLDA program should be implemented in a way that renders

⁹ See, e.g., UE 358 – PGE/300/Sims – Tinker/5.

¹⁰ UE 358 – PGE/300/Sims – Tinker/1-2.

¹¹ UE 358 – CUB/100/Jenks/3.

¹² UE 358 – PGE/300/Sims – Tinker/1-2.

COS to be effectively held harmless by the cost shifting that will occur as a result of this program. Until different approaches are explored through a subsequent proceeding, CUB believes imposing the RIC and RAD on PGE’s NLDA program achieves that goal.

This Brief will address the market dynamics that have led to the shifting of costs from Direct Access customers to COS customers, and will reaffirm CUB’s position that the RIC and RAD are necessary to eliminate this subsidy in the nascent NLDA program while other options are considered for potential LTDA application. While PGE’s filing also implicated issues related to long-term planning and the queue for potential NLDA customers, CUB’s Brief will solely address the capacity charges contemplated in PGE’s NLDA filing.

II. ARGUMENT

A. *There is a real capacity-related issue that must be addressed in this case.*

There is a real issue regarding capacity procurement for PGE’s NLDA program that must be addressed in this proceeding. CUB supports a subsequent proceeding to more fully vet issues related to the capacity needed to supply LTDA customers, and the Direct Access program at large. However, CUB believes action must be taken now to ensure that the NLDA program does not result in unwarranted cost shifting in contravention of the Commission’s statutory obligation.¹³ CUB believes unwarranted cost shifting is likely already occurring the context of LTDA programs—COS customers pay for the fixed costs of generation that is necessary to support the market that ESSs rely

¹³ ORS 757.607(1) (“The provision of direct access to some retail electricity customers must not cause the unwarranted shifting of costs to other retail electricity consumers of the electric company.”).

on to serve Direct Access customers.¹⁴ Direct Access customers only pay the variable costs of these resources on the market—primarily fuel.¹⁵ This problem is exacerbated as more renewable resources are brought on consistent with Oregon’s Renewable Portfolio Standard, because these resources do not have any attendant fuel cost.¹⁶ Renewables are almost entirely fixed costs that are subsidized by COS customers.¹⁷ Further, as we enter into a period of relative capacity constraints in the Northwest, it is imperative that utilities like PGE ensure they have adequate capacity to meet the needs of all customers on their system.¹⁸

The broader problems that exacerbate this issue, such as changes in market dynamics in the years following SB 1149’s passage, widespread wholesale market distortion, and regional resource adequacy concerns have been well articulated in CUB’s pre-filed Reply Testimony and CUB’s Response to ALJ Moser’s September 20, 2019 Bench Request.¹⁹ Therefore, we will not reiterate them here. However, these concerns remain largely unaddressed and unrebutted by parties to this proceeding. Through the evidence placed on the record regarding broader market dynamics and the subsidization of Direct Access customers by COS customers, CUB has made a case to support the imposition of the RIC and RAD to PGE’s NLDA program while a broader solution is reached. CUB believes there is sufficient evidence throughout the record in this

¹⁴ UE 358 – CUB/100/Jenks/3. CUB notes that what constitutes “unwarranted” cost shifting is an outstanding legal issue that has not yet been ruled upon by the Commission (*see in re Portland General Electric Company’s Request for a General Rate Revision*, OPUC Docket No. UE 335, Order No. 19-128 at 3-4 (Apr. 11, 2019). This issue is likely to be decided in the UM 2024 LTDA investigation.

¹⁵ UE 358 – CUB/100/Jenks/3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ UE 358 – PGE/403.

¹⁹ *See generally* UE 358 – CUB/100/Jenks/3-14 and UE 358 – CUB’s Response to Commission Bench Request.

proceeding to support these capacity-related charges. Importantly, the Commission must base its decision in this matter on the record of evidence that the contesting parties have developed.²⁰ Here, no parties have sufficiently rebutted CUB’s arguments in support of the RIC and RAD. Therefore, we respectfully request that the Commission approve PGE’s NLDA Advice Filing including the RIC and RAD capacity charges while other Direct Access issues are explored in a generic investigation.

B. *Responses to AWEC’s Bench Request Response*

In its AWEC’s response to the ALJ’s bench request, it notes that both CUB and PGE’s bench responses “implicate customers in PGE’s long-term direct access program – a program that is not under consideration in this docket.”²¹ AWEC goes on to say that “implementing the RAD will not eliminate” the subsidy that CUB has provided evidence of since the subsidy will still be present in the context of LTDA customers.²² AWEC is correct that PGE’s LTDA program is not at issue in this proceeding. While CUB believes the subsidy likely exists in the LTDA program as well, AWEC’s assertion regarding the LTDA subsidy is just that—an assertion. We look forward to engaging with a variety of stakeholders in the LTDA investigation to determine whether a subsidy exists based upon the evidence that will be presented there. Meanwhile, the Commission has been presented with evidence in *this* proceeding that a subsidy is occurring. CUB believes it is necessary to act on the NLDA program given the evidentiary record before the Commission here. By acting in this proceeding, the Commission can help to

²⁰ *Oregon Env. Council v. Oregon State Bd. Of Ed.*, 307 Or. 30, 37, 761 P.2d 1322 (1988).

²¹ UE 358 – AWEC Response to Bench Request at 1-2.

²² *Id.* at 2.

eliminate this subsidy while simultaneously sending a signal that it is an issue that should be explored in the generic LTDA investigation.

AWEC also attacks CUB's testimony and bench request response in this proceeding, asserting that CUB's assertions have been made "without any evidence."²³ CUB has provided evidence in this proceeding to support imposition of the RIC and the RAD. It is undisputed in this proceeding that prices at the Mid C trading hub have declined, due in no small part to the accelerating rollout of renewable energy whose fixed costs are subsidized by COS customers.²⁴ The market dynamics that have led to a subsidization of Direct Access customers by COS customers is well-articulated in the evidentiary record in both CUB's pre-filed testimony and our response to the ALJ's bench request. No party denies that this is occurring. While CUB acknowledges the relatively narrow scope of this proceeding, we argue that this subsidization constitutes unwarranted cost shifting in the context of the NLDA program.

This subsidization will occur unless some variant of a capacity-based charge like the RIC and RAD are imposed. CUB is hopeful that alternative solutions will also be explored in the generic LTDA investigation. Until that time, we continue to believe the RIC and the RAD are reasonable solutions to eliminate cost shifting while the NLDA program is rolled out. The Commission has a statutory obligation to prevent unwarranted cost shifting in the provision of its Direct Access programs.²⁵ CUB believes the RIC and the RAD help ensure this does not occur in PGE's NLDA program while alternative options are explored in the generic proceeding.

²³ *Id.* at 2.

²⁴ UE 358 – CUB/104.

²⁵ ORS 757.607(1).

III. CONCLUSION

For the foregoing reasons CUB respectfully requests that the Commission approve PGE's Advice Filing 19-02 including the RIC and RAD capacity-related charges.

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Respectfully submitted,



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