Portland General Electric Company
Legal Department
121 SW Salmon Street • 1WTC1301 • Portland, Oregon 97204
Telephone 503-464-8544 • Facsimile 503-464-2200
portlandgeneral.com

Erin E. Apperson
Assistant General Counsel
erin.apperson@pgn.com

November 14, 2019

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street, SE, Suite 100
Salem, Oregon 97301

Re: UE 358 – Portland General Electric Company Advice No. 19-04 New Load Direct Access, Portland General Electric Company's Opening Brief

Dear Filing Center:

Portland General Electric Company (PGE) encloses for filing in the above-referenced docket its Opening Brief.

Thank you for your assistance.

Sincerely,

Erin E. Apperson
Assistant General Counsel

EEA: dm

Enclosure

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.	**PORTLAND GENERAL ELECTRIC COMPANY'S OPENING BRIEF**

I. INTRODUCTION

Portland General Electric Company (PGE or Company) submits this opening brief to the Public Utility Commission of Oregon (OPUC or Commission). PGE respectfully requests that the Commission approve Schedule 689, including the resource intermittency charge (RIC) and the resource adequacy charge (RAD) as well as PGE's long-term market energy option. PGE also requests that the Commission clarify the language from integrated resource planning (IRP) guideline 9[1] and allow PGE to include new load direct access loads into its planning process to ensure reliability and sufficient system capacity.

Electricity is a fundamental service that is essential to the prosperity of PGE's customers and communities and PGE takes seriously its responsibility to ensure electric service remains safe, reliable, and affordable for all customers. PGE recognizes that electricity is foundational to a modern society—warming homes, fueling enterprises, and driving the economy. Additionally, as the OPUC recently recognized, the Senate Bill (SB) 978 process "confirmed the continued importance of the guiding objectives that underlie the core directives

[1] Guideline 9 states: "an electric utility's load-resource balance should exclude customer loads that are effectively committed to service by an alternative electric supplier." Order No. 07-002 at 19.

in the Commission's enabling statutes: safety and reliability, cost and reasonable rates, and the utility's obligation to offer service to all customers in its service territory (non-discriminatory)."[2]

Of central importance in this proceeding are PGE's efforts to help assure continued reliability for all customers while ensuring that benefits, costs, and risks are equitably shared by all customers, including cost-of-service and customers who choose to procure energy under the new load direct access (NLDA) program. As the reliability provider and provider of last resort, PGE has the ultimate responsibility for ensuring system reliability for everyone in its service territory—regardless of whether the customer receives energy from PGE or an electricity service supplier (ESS). This is why PGE set forth proposals aimed at resource adequacy—which is a foundational requirement for a reliable electric system—for *all* customers and communities within its service territory.

Parties in this proceeding seem to generally agree that resource adequacy is important for a reliable electric system, but disagree on the best path forward to ensure all customers—including new load direct access customers—are afforded the appropriate level of resource adequacy. PGE's solution is the best approach set forth in this proceeding to address this gap in the existing direct access landscape.

---

[2] SB 978 Actively Adapting to the Changing Electricity Sector at 13, available at: https://www.oregon.gov/puc/utilities/Documents/SB978LegislativeReport-2018.pdf

II. ARGUMENT

A. Resource Adequacy is a Significant and Urgent Issue that Requires Prompt Commission Action.

1. Resource Adequacy Poses a Real and Pressing Reliability Concern.

Ensuring resource adequacy within PGE's service area is essential to the Company and underpins its proposals in this proceeding. As the reliability provider, PGE does not believe it would be responsible to allow the addition of new, large, unplanned-for NLDA loads onto the system without a path forward regarding resource adequacy for all customers. In this proceeding, PGE is simply seeking to plan for the capacity needs of loads and acquire capacity resources in order to maintain a level of reliable service that is essential to a modern society. System-wide resource adequacy depends on factors ranging from the characteristics of the load, seasonal weather patterns, hourly load patterns, as well as system energy resources such as, size, dispatchability, outage rates, and other availability limitations.[3]

The Pacific Northwest is in a time of great change—there are significant numbers of large capacity resource retirements in the near future, which could lead to a capacity shortfall as soon as 2021.[4] The Northwest Power and Conservation Council's draft Resource Adequacy Assessment forecasts a loss of load probability of seven to eight percent in 2021.[5] Recent regional resource adequacy assessments have found that 500 MW of new capacity resources will be necessary by 2023 to maintain resource adequacy in the region.[6] The loss of

---

[3] PGE/100; Sims-Tinker/5 citing Resource Adequacy in the Pacific Northwest, March 2019 (Report by Energy and Environmental Economics), page 4, available at: http://www.publicgeneratingpool.com/wp-content/uploads/2019/03/E3_NW-Resource-Adequacy_Final-March-2019.pdf.
[4] PGE/300; Sims-Tinker/4.
[5] PGE/300; Sims-Tinker/7.
[6] PGE/200; Sims-Tinker/20 citing Pacific Northwest Power Supply Adequacy Assessment for 2023, June 2018 (Report by Northwest Power and Conservation Council), page 6, available at: https://www.nwcouncil.org/sites/default/files/2018-7.pdf

these capacity resources poses a unique risk to the Pacific Northwest given our dependence on hydroelectric generation and the annual variability in runoff and other hydro conditions which significantly impact the capability of hydro resources that the region relies on so heavily.

Alliance of Western Energy Consumers (AWEC) asserts that the NLDA program is insignificant within the region.[7] This misses the point. PGE is concerned that adding new, large, unplanned-for NLDA loads will increase the magnitude of the resource adequacy deficit and therefore increase the loss of load probability *for all customers*. As discussed in testimony, PGE estimates that approximately 373 MW of additional incremental capacity resources would be necessary to support the reliability needs of existing direct access customers alone.[8] This is why PGE seeks approval in this proceeding to conduct resource planning for the capacity needs of these NLDA loads, acquire the necessary capacity resources, and ensure that NLDA customers are contributing equitably to the cost of that capacity.

In asking the Commission to delay its decision on resource adequacy and these reliability charges until a subsequent proceeding, Staff points to the timing of a future general rate case.[9] PGE disagrees with Staff's rationale for delaying approval of its proposal. Should the Commission approve PGE's proposal in this proceeding, PGE has explained the process it would use to acquire capacity, noting that PGE expects that this would include "acquir[ing] medium-term structured capacity products via bilateral procurement options."[10] This timing supports the need to approve PGE's proposals in this proceeding without waiting until the conclusion of a protracted generic investigation.

---

[7] AWEC/100; Mullins/7.
[8] PGE/200; Sims-Tinker/20 citing PGE's 2019 IRP, Chapter 4, Section 4.7.3.1 Direct Access Capacity Adequacy Sensitivities, at 125.
[9] *See* Staff/300; Gibbens/4.
[10] PGE's Response to Bench Request at 3.

2. Cost-of-Service Customers Should Not Be Forced to Subsidize NLDA Customers for Resource Adequacy.

If the Commission does not approve PGE's proposal in this proceeding, cost-of-service customers will unfairly subsidize NLDA customers who will not contribute their fair share to resource adequacy. As a fundamental matter, all electrical loads impact system reliability and resource adequacy regardless of whether the load originates as a direct access or cost-of-service customer.[11] All loads should therefore be allocated and pay their proportional costs associated with resource adequacy, which is exactly what PGE's proposals in this proceeding would do. As the Citizens' Utility Board (CUB) explained in testimony, PGE's proposed charges are necessary to ensure that NLDA customers will pay for the service they receive.[12]

All customers within PGE's service territory should be required to pay for the capacity necessary to ensure they are served reliably. If NLDA customers are not required to bear their proportional responsibility for the capacity necessary for PGE to serve as the provider of last resort and serve them reliably, then cost-of-service customers would bear the full cost of ensuring an adequate and reliable system. Rate-making principles are deeply rooted in "cost causation" principles where each rate schedule and customer class pays its proportional share of costs that it places on a utility's system. PGE's proposals fit directly with its reliability provider mandate and sound rate-making principles.

While certain parties have acknowledged that cost-of-service customers should not subsidize direct access customers with respect to resource adequacy,[13] it has become increasingly clear that without PGE's proposed modifications to address reliability, customers enrolling in the NLDA program will not contribute toward resource adequacy. This means

[11] PGE/200; Sims-Tinker/19 citing PGE Exhibit 203.
[12] CUB/100; Jenks/3.
[13] AWEC/200; Mullings/6-7.

that ESSs such as Calpine Energy Solutions, LLC (Calpine) would be allowed to continue to freely socialize reliability costs onto cost-of-service customers. As Calpine correctly noted, "PGE does not identify any Commission rule or law that Calpine Solutions has violated."[14] Rather, as PGE noted in testimony, it has become clear that ESSs do not contract for specified resources, but rely on short-term market purchases, and contractual financial damages to excuse non-delivery.[15] But PGE maintains the obligation to serve all customers' load if an ESS is unable to secure or deliver necessary supply.[16] Since ESS activities simply do not support resource adequacy, their practices will continue to shift costs onto cost-of-service customers.[17]

Despite evidence to the contrary, Calpine argues that it is contributing to capacity needs by contracting for firm power from unspecified sources with liquidated damages.[18] However, such off-system unspecified short-term market purchases do not provide Calpine with any assurance of a physical resource needed to create the energy at the time of delivery. Rather Calpine's market purchases represent a seller's financial commitment to compensate Calpine should the seller fail to physically deliver.[19] In such instances, PGE remains responsible to guarantee physical delivery to Calpine's customers. The record in this proceeding demonstrates that Calpine is not currently taking any actions, such as planning and procurement, to actively support resource adequacy on behalf of Oregon customers because ESSs are not required to do so under the current regulatory framework and will not do so for NLDA loads that come online.[20] This is the exact problem that PGE's proposal aims to solve.

[14] Calpine Solutions/200; Bass/4.
[15] PGE/200; Sims-Tinker/19.
[16] PGE/300; Sims-Tinker/16.
[17] PGE/300; Sims-Tinker/15-16.
[18] Calpine Solutions/200; Bass/3-4.
[19] *See* Calpine Solutions/200; Bass/3.
[20] PGE/300; Sims-Tinker/15-16.

Given the increasingly urgent resource adequacy concerns in the region, PGE maintains that the Commission should not allow the NLDA program to go into effect without first approving PGE's proposed reliability charges aimed at ensuring reliable service for *all* customers within its service territory into the future. Expanding the direct access program through NLDA without allowing PGE to plan for and procure capacity in order to prudently ensure capacity is available for all loads equally will add to the reliability challenges for PGE and the region.[21] As PGE underscored in testimony, implementing NLDA without approving solutions to address resource adequacy for all customers, even on a provisional basis, would unnecessarily jeopardize the reliability of the electric system and place an undue cost burden on cost-of-service customers.[22]

B. PGE's Proposal is Not Unjustly Discriminatory or Unfair between NLDA and LTDA Customers.

1. The Commission Has Already Distinguished between NLDA and LTDA Customer Classes.

While PGE agrees that the issues raised in this proceeding should be analyzed and ultimately approved with respect to the long-term direct access (LTDA) program, PGE maintains that the Commission has the authority to approve these charges for NLDA before deciding whether and how they should also apply to LTDA. Such an approach would not be unjustly discriminatory—the Commission has already determined that NLDA customers are a distinct class when determining whether it had the legal authority to consider different transition charges for NLDA.[23] NLDA and LTDA are differently situated because NLDA includes load that was never planned for and therefore creates immediate reliability concerns,

---

[21] PGE/300; Sims-Tinker/4.
[22] PGE/300; Sims-Tinker/4.
[23] *See* Order No. 18-031, Appendix A at 1.

whereas LTDA customers started as PGE supply customers with PGE planning for them.[24] Therefore, different treatment for NLDA and LTDA is justified by different circumstances and importantly, approval of PGE's proposal would not unfairly advantage one customer class over another.

Staff opposes PGE's proposal, in part, based on concerns that applying the RIC and RAD to only NLDA customers may be discriminatory.[25] AWEC also expressed concern that NLDA and LTDA customers are indistinguishable from resource adequacy and scheduling perspectives.[26] With respect to the RIC, Staff notes that an ESS schedules direct access loads for all its direct access customers, but PGE would be imposing charges only on NLDA customers.[27] As a practical matter, this is governed by a tariff provision in PGE's Rule K that PGE could seek to modify to implement separate scheduling.[28] While PGE disagrees with Staff's characterization regarding discrimination between NLDA and LTDA, if the Commission were to agree with Staff and AWEC, then these discrimination arguments should apply equally between direct access and cost-of-service customers—that the current structure unfairly discriminates against PGE's cost-of-service customers because resource adequacy is a service PGE is obligated to provide to *all* customers regardless of their energy supplier.

Under ORS 757.230, the Commission is permitted to create service classifications based on a number of factors, "including other reasonable consideration[s]" as determined by the Commission. Under ORS 757.310(2), "a public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges

[24] PGE/200; Sims-Tinker/4.
[25] Staff/300; Gibbens 2.
[26] AWEC/100, Mullins/9-10.
[27] Staff/200; Soldavini/6-7.
[28] *See* Hearing Transcript at 36.

any other customer for a like and contemporaneous service under substantially similar circumstances." ORS 757.310(2) addresses discrimination by prohibiting utilities from charging two customers in the same rate classification different rates for the same service. Under ORS 757.325(1), "no public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect."

In this proceeding, approving these reliability charges for only NLDA customers would not result in discriminatory treatment—the Commission has already identified distinguishing factors between NLDA and LTDA rate classes when it considered different transition charges for NLDA customers.[29] The Commission opened Docket No. UM 1837 per Staff's recommendation "to investigate questions related to the appropriate treatment of direct access transition adjustments for new customer load at a new site."[30] In that proceeding, when discussing "whether the Commission has the legal authority to treat new non-residential direct access load differently than is current practice"[31] Staff found that the Commission has "broad discretion in setting transition charges and credits, subject to statutory requirements around unwarranted cost-shifting, unwarranted and unjust discrimination, and default energy suppliers."[32] Staff further noted that "whether and to what extent the Commission should exercise its discretion is a matter of policy."[33]

NLDA and LTDA are distinct customer classes and different treatment is justified by different circumstances. Of particular importance for resource adequacy and reliability, these

[29] *See* Order No. 18-031, Appendix A at 1.
[30] Order No. 17-171 at 1.
[31] UM 1837, Staff's Opening Brief at 1.
[32] UM 1837, Staff's Opening Brief at 1.
[33] UM 1837, Staff's Opening Brief at 1.

include different load and resource planning frameworks where NLDA loads are explicitly not included in planning and do not have any capacity resources acquired to support their service whereas LTDA were planned for by PGE at some point previously.[34] Importantly, LTDA customers who are still in their transition period are still contributing to energy and capacity resources through the transition adjustment.[35] NLDA customers therefore have a more acute and immediate reliability impact than LTDA because NLDA were never planned for by PGE. Additionally, the Commission has distinguished NLDA from LTDA with respect to the former being new load, a new site or new load growth at an existing site and LTDA being load served on costs of service prior to enrolling in direct access, transition adjustments and by size threshold—the size threshold for NLDA is 10MWa while LTDA is 1MWa.[36]

2. *Any Due Process Concerns Will Be Addressed Through Subsequent Proceedings Addressing LTDA.*

As discussed above, PGE believes that the Commission has the authority to approve reliability charges for NLDA customers without approving these charges for LTDA customers at this time. While PGE believes that these charges should apply to LTDA customers in the future, PGE also recognizes that it will need to demonstrate why the Commission should take such an action in a subsequent proceeding and address factual distinctions between NLDA and LTDA customers. As noted, NLDA and LTDA are fundamentally distinct and subject to different program rules. A Commission decision now regarding charges for NLDA customers should not directly impact LTDA rates as described by PGE.

[34] PGE 200; Sims-Tinker/10.
[35] PGE 200; Sims-Tinker/10.
[36] PGE 200; Sims-Tinker/11.

C. PGE's Resource Adequacy Charge is the Best Path Forward to Address Resource Adequacy Impacts Caused by NLDA.

1. The RAD is Necessary for Implementation of NLDA.

Parties in this proceeding seem to recognize that regional capacity and resource adequacy are important considerations. Staff initially agreed that PGE's capacity concerns related to new load were "reasonable in light of anticipated capacity constraints in the Northwest."[37] Calpine's rebuttal testimony recognizes that as renewable generation is added and existing fossil fuel generation is retired, resource adequacy needs in the region "will increase in order to support the current levels of reliability."[38] CUB agrees with PGE that the RIC and RAD are necessary in order to prevent unwarranted risk and cost shifting to cost-of-service customers as resource adequacy becomes increasingly concerning.[39] These concerns about regional capacity and resource adequacy are exactly why PGE proposed the RAD ahead of implementing NLDA rather than after the program is effective and these challenges are further exacerbated.

PGE created the RAD to mitigate against shifting costs associated with resource adequacy and reliability from NLDA customers to cost-of-service customers. The RAD is a fee related to the cost PGE would incur if it were to plan for and secure the capacity necessary to effectuate its reliability provider responsibility.[40] This fee is necessary to ensure adequate capacity planning, procurement, and cost allocation for all customers, not just cost-of-service customers. PGE's NLDA tariff would assess this RAD charge on all NLDA customers to recover the costs of assuring resource adequacy for NLDA customers.

---

[37] Staff/100; Gibbens/5.
[38] Calpine Solutions/200; Bass/4.
[39] *See* CUB/100; Jenks/3.
[40] Docket No. ADV 919, Initial Advice No. 19-02 Filing at page 2

Currently, cost-of-service customers already receive and pay for resource adequacy. While it is not a line item on their bill, it is embedded in the base service they receive from PGE.[41] Without the RAD, NLDA customers would not contribute to resource adequacy. PGE's proposal in this docket aims to address this by allowing PGE to plan for the capacity needs of NLDA customers, prudently procure the required capacity, and functionalize the costs of resource adequacy across all customers, including NLDA customers. Approval of PGE's proposal is necessary to prevent inequitable allocation of costs and risks and ensure that all customers who receive a service, fairly pay for such service.

The Commission should not implement the NLDA program without consideration for resource adequacy and its impacts as this would result in outcomes that are not fair, just, and reasonable for cost-of-service customers. As CUB noted in testimony, cost-of-service customers alone pay for the fixed costs of generation and are unduly burdened with the resource adequacy related costs and risks stemming from direct access.[42] Staff also recognized this potential cost-shift in finding that PGE's concerns regarding resource adequacy were reasonable given the failure of ESSs to plan and procure for resource adequacy while PGE and cost-of-service customers remain responsible to pay for these resources.[43]

2. *The RAD is Necessary To Prevent Unwarranted Cost-Shifting to Cost-of-Service Customers.*

The Commission should not approve PGE's NLDA program unless it also addresses the statutory prohibition against unwarranted cost-shifting to remaining cost-of-service

---

[41] PGE 200; Sims-Tinker/13.
[42] CUB/100; Jenks/3.
[43] Staff/100; Gibbens/13.

customers. In supporting the RAD charge, CUB discussed the structural issues in the current western markets and how the RAD can address those issues.[44]

ORS 757.607(1) prohibits "unwarranted shifting of costs to other retail electricity customers of the electric company." Staff has noted that the indicative pricing of the RAD appears extreme.[45] But this underscores the magnitude of the cost-shifting that would occur if the Commission fails to adopt PGE's proposal or otherwise allows NLDA customers to come online without some sort of reliability charge. It has become clear throughout this docket that resource adequacy is not currently a component of the supply provided by ESSs from unspecified sources in the short-term wholesale market.[46]

Parties argue that direct access customers should be able to voluntarily expose themselves to the risk of their supply choice,[47] but this ignores PGE's important role as reliability provider and provider of last resort within its service territory. The RAD is necessary to ensure adequate resource planning and procurement to maintain system reliability during events which can range from a lack of physical power available to back ESS market purchases or a direct access customer returning to cost-of-service unexpectedly.[48] Under the current framework, direct access customers are not uniquely exposed to reliability risks—it is something shared by all customers in PGE's service territory. If the Commission approved the NLDA without the RAD, NLDA customers would receive all reliability benefits without paying any associated costs—which would all be incurred by cost-of-service customers.[49]

---

[44] *See* CUB/100, Jenks/15-16.
[45] Staff /100; Gibbens/15.
[46] *See* PGE/200; Sims-Tinker/21-23.
[47] *See* AWEC/200; Mullins/9.
[48] PGE/200; Sims-Tinker/21.
[49] PGE/300; Sims-Tinker/17-18.

3. *The Commission Has Authority to Approve the RAD Even Though the Exact Charge Will be Calculated in a Future General Rate Case.*

PGE believes it would be fundamentally unfair and misleading to avoid providing customers information regarding all charges that will be applied should they enroll in NLDA. If the Commission waits for the conclusion of a generic docket to decide whether NLDA may be charged for these services, then PGE is concerned that customers will not know the full extent of the terms and conditions of electing NLDA.

As PGE explained in testimony, PGE believes that a general rate case is the appropriate proceeding to determine the exact RAD charge. That proceeding will occur after PGE has procured capacity resources, will include a cost-of-service study that considers functionalized resource adequacy costs, and will include a rate spread/rate design approach that ensures customer prices accurately reflect their share of resource adequacy related costs. The general rate case will also allow parties to vet PGE's approach or propose alternatives regarding the technical aspects of functionalization and ratemaking. These considerations all relate to the inputs and calculations, which is not within the scope of PGE's request in this proceeding.

Instead, PGE is currently asking the Commission to acknowledge that the RAD is the appropriate mechanism for ensuring resource adequacy in implementing the NLDA program and PGE's proposed methodology is fair, just, and reasonable. PGE does not believe that the absence of an exact charge should justify delaying consideration and approval of the RAD. Such a concept of approving a methodology for calculating a rate does not seem to be a significant departure from other ratemaking proceedings in Oregon such as PGE's Annual Update Tariff and Power Cost (AUT) or the Annual Power Cost Variance Mechanism (PCAM).[50]

---

[50] PGE Tariff Rate Schedules 125 and 126.

PGE provided an indicative RAD price in its initial filing, which is based on an IRP analysis.[51] PGE subsequently detailed that it planned to functionalize its production-related revenue requirement to identify resource adequacy related costs and has acknowledged that the actual RAD price may differ based on factual changes such as incremental resource procurement or the specific rate design approach in a subsequent general rate case (GRC). PGE is also willing to provide updated indicative pricing to NLDA customers if the Commission approves the RAD concept.[52]

PGE recognized that Staff, AWEC, and Calpine took issue with the limited amount of information regarding how PGE would functionalize this charge in the context of a cost-of-service study.[53] However, PGE has provided information in this proceeding regarding how the RAD would be calculated in a future general rate case. Specifically, PGE outlined the following resource adequacy functionalization principles: 1) resource adequacy is a service supplied through the provision of capacity and the costs of resource adequacy are attributable to all customers and classes (regardless of energy supplier); 2) costs associated with providing firm capacity from physical resources should be functionalized to resource adequacy service; 3) each resource's contribution is unique and dependent on the resource's characteristics; 4) each class's or schedule's need is unique and dependent on the characteristics of that class or schedule; 5) existing and incremental resources costs will be evaluated on the equivalent methodological basis and spread to all customers based on cost causation principles; and 6) a general rate case is the most transparent and equitable way to functionalize costs associated with resource adequacy.[54]

---

[51] Docket No. ADV 919, Initial Advice No. 19-02 Filing at 7.
[52] PGE/300; Sims-Tinker/23.
[53] PGE/300, Sims-Tinker/19.
[54] PGE/300, Sims-Tinker/19-20.

Additionally, PGE outlined how it would likely set prices for the RAD: 1) establish the revenue requirement; 2) allocate (or functionalize) the revenue requirement by category (e.g. generation, distribution, transmission, and resource adequacy); and 3) conduct a rate spread study to apportion the functionalized categories of costs to each rate schedule.[55] As PGE has explained, the RAD would apply to all customers, which only cost-of-service customers are currently paying through their fixed and volumetric prices. In response to the administrative law judge's September 20, 2019 bench request, PGE also explained how PGE would collect charges if the RAD were approved on interim basis. Specifically, PGE noted that it would explore alternative mechanisms such as a regulatory deferral of the incremental costs or the use of the AUT and PGE also stated that the revenues received from the RAD would be an offset to prudently incurred resource adequacy related costs.[56]

4. The Commission Has the Discretion to Approve the RAD under Existing Law.

In its initial filing, PGE identified a gap in the current direct access framework that now requires Commission action and PGE believes that the Commission has the discretion to approve the RAD under the existing direct access laws. Calpine and AWEC state that the RAD may be contrary to direct access law.[57] Calpine notes that ORS 757.600 defines electricity to mean electric energy, electric capacity or both and argues that PGE's proposal would result in a "partial but substantial unwinding of direct access service" by forcing NLDA customers to be permanent customers of PGE for capacity service.[58]

Importantly, SB 1149 gives the Commission broad authority to define and implement direct access programs. This is outlined in ORS 757.600(6), which defines direct access as

---

[55] PGE/300, Sims-Tinker/20-21.
[56] PGE's Response to Bench Request at 5.
[57] *See* Calpine Solutions/300, Higgins/11; AWEC/100, Mullin/5.
[58] Calpine Solutions/100; Higgins/11.

"the ability of a retail electricity consumer to purchase electricity and certain ancillary services, *as determined by the commission for an electric company* or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility."[59] PGE believes that this provides the Commission with the discretion to implement direct access policies consistent with the directive to maintain safe, reliable service, while also balancing other statutory considerations of unwarranted cost-shifting.

As discussed above, the RAD is necessary to prevent unwarranted cost-shifting between NLDA and cost-of-service customers, which is prohibited by statute. As CUB noted in opening testimony, the direct access laws were enacted with a very different view of the evolving market structure in the Pacific Northwest—before the western power crisis, the renewable portfolio standard, and before the coal to clean bill (SB 1547).[60] Now, approximately 20 years after the direct access legislation passed, the region is facing a capacity shortfall that was not originally anticipated. Therefore, PGE believes that, at the time direct access was first enacted, policymakers did not contemplate today's circumstances of a high concentration of variable resources coupled with the retirements of firm capacity resources. What the Commission has recently recognized is that customer choice programs must be designed in a way that does not add "significant unwarranted costs to non-participants."[61]

5. *Customer actions can offset RAD charges.*

If the Commission agrees that PGE should plan for the capacity needs of NLDA customers, then it will be appropriate for those customers to be permitted to participate in

---

[59] ORS 757.600(6) (emphasis added).
[60] CUB/100; Jenks 4.
[61] SB 978 Actively Adapting to the Changing Electricity Sector at 16, available at: https://www.oregon.gov/puc/utilities/Documents/SB978LegislativeReport-2018.pdf

PGE's programs compensating customers for customer contributions to PGE's capacity needs. While participating in PGE's demand response programs should not exclude NLDA customers from RAD charges, NLDA customers could partially or fully offset the RAD by participating in an appropriately designed demand response program.[62]

PGE recognizes and encourages the important role that customers play in supporting PGE's system needs and welcomes NLDA customer participation in customer-sited generation or demand response programs provided that PGE is made responsible to plan for the capacity needs of NLDA customers and these programs function to provide meaningful and reliable contributions to resource adequacy. However, until PGE plans for the capacity needs of NLDA customers and their impact to resource adequacy is acknowledged, participation in customer programs remains unjustified as there is no offsetting action associated with NLDA customer participation.[63]

PGE's existing non-residential demand response program would be well-suited for NLDA customer participation. Willing customers would have the opportunity to curtail their loads and receive a credit for their participation in demand response. That credit in turn would allow customers to offset their exposure to the RAD charge, and provide PGE resource flexibility during times of system constraint.[64] Participation in a demand response program would allow PGE to prioritize the curtailment of participating NLDA customers on a voluntary basis.

[62] PGE/200; Sims-Tinker/25.
[63] PGE/200; Sims-Tinker/26.
[64] PGE/200; Sims-Tinker/16.

Calpine has proposed that NLDA customers be allowed to participate in an exclusive demand response program whose terms and conditions would be preferential to Schedule 26.[65] Specifically, Calpine recommends that the demand response payments be administratively determined to equal the all capacity charges made by PGE.[66] PGE believes this to create preferential treatment for NLDA customers. The capacity payments made under Schedule 26 are cost-based and reflect the estimated value of the program's contribution to PGE's capacity needs given the commitments and elections of participants. Calpine's proposal would allow for significantly higher capacity payments than are available under Schedule 26 while NLDA customers make no greater contribution to system capacity needs. The fact that a NLDA customer is not a cost-of-service customer and procures energy from an ESS does not increase the contribution associated with a NLDA customer participating in a demand response program. There is no justification for preferential demand response programs for the benefit of the NLDA customer class.

Calpine's demand response program is operationally infeasible from both an operations and customer perspective. Under Calpine's proposal, NLDA customers may only be called upon to participate in demand response events when ESSs fail to deliver. In practice, Calpine's proposed NDLA demand response program would not allow adequate time for PGE to call on the program. PGE is unable to compare actual NLDA loads to ESS schedules until well after the operational hour. For this reason, it is simply not feasible to measure whether an ESS has adequately delivered before identifying the need for a demand response event. Once PGE determines an ESS delivery is below a material threshold, the needed demand response event has already passed. Additionally, Calpine's demand response proposal would not broadly

---

[65] *See* Calpine Solutions/300; Higgins/6.
[66] *See* Calpine Solutions/300; Higgins/3.

support the resource adequacy needs that the RAD is intended to address because it narrowly limits the system conditions in which the demand response resource can be called upon.

6. ESS Supply of Capacity for Resource Adequacy is Not Practicable Under the Existing Direct Access Framework.

PGE believes that the Commission has the authority to consider and require resource adequacy for all customers. However, the Commission has limited authority over the standards for certification of ESSs in Oregon.[67] PGE has the sole responsibility for providing and maintaining reliability within its service territory. In doing so, PGE must operate its balancing authority area in compliance with various reliability standards as well as state planning and procurement requirements in a transparent manner with oversight and involvement from the Commission, Staff, and various stakeholders. An ESS attempting to provide third-party supply of resource adequacy would not have any of these requirements. Additionally, as detailed in PGE's testimony, third-party supply of capacity for resource adequacy could be inherently limited or altogether ineffective unless the necessary framework exists such that PGE can use such supply to provide resource adequacy.[68]

PGE is best suited to act as the provider of resource adequacy because PGE is in the unique position to enable delivery of both centralized and distributed capacity at the lowest cost. Dividing capacity responsibilities among multiple entities would necessarily require more procurement than would be achieved through PGE's proposed centralized capacity procurement. Planning and procuring for undivided demand is beneficial due to the diversity of demand and the ability to use fewer resources and agreements to meet aggregated needs.

[67] *See* ORS 757.649.
[68] PGE/200; Sims-Tinker/27.

7. Load-Shedding Is Not A Feasible Alternative to the RAD.

Parties have advocated that the Commission should implement a discriminatory curtailment practice which allows PGE to "curtail" or shed the load of NLDA customers as a means of supplying resource adequacy.[69] As a practical manner, PGE does not have the ability to engage in discriminatory load shedding in the manner described by parties. PGE's retail tariff—specifically, Rules C and N—dictate how and when PGE can engage in curtailment.[70] PGE therefore lacks the authority to interrupt NLDA customers in a discriminatory manner. In fact, PGE must treat direct access and cost-of-service customers in a non-discriminatory manner when load-shedding must be enacted.[71]

Fundamentally, it is not in the public interest to rely on load-shedding as a substitute for effective capacity planning and procurement. Large and small customers rely on the continuous availability of electric service to power society. Service disruptions can be enormously damaging to local communities and taking preventive actions including the procuring for our capacity needs is essential.

D. The Resource Intermittency Charge is Necessary to Balance ESS Schedules.

1. The RIC Serves a Necessary and Distinct Function from the RAD.

The RIC is intended to compensate cost-of-service customers for the capacity they pay for which is used to balance deviations between direct access loads and ESS schedules of energy to serve those loads.[72] Parties argue that the RIC is duplicative of services that already

---

[69] *See* Calpine Energy Solutions LLC's Reply to PGE's Responses to Bench Request at 3.
[70] Rule N is specific to a "protracted regional Electricity shortage" and can only be "activated when declared necessary by State authorities." Original Sheet No. N-1, filed in Advice No. 07-01, effective 1/17/07. *See also* Order No. 01-777.
[71] Order No. 01-777 at 39.
[72] *See* PGE/200; Sims-Tinker/5; *See also* Hearing Transcript at 34, lines 4-11.

exist within PGE's Open Access Transmission Tariff (OATT) and duplicative of the RAD.[73] This is not the case as the OATT services referenced by the parties either pertain to balancing moment-to-moment load fluctuations or provide for the energy needed to supply load and generation deviations over an hour, but not the capacity to do so.[74]

PGE has shown in its testimony that direct access delivery differences tend to correlate with peak load (e.g. under-delivery during high load periods and over-delivery during low load periods).[75] The RIC does not address over-delivery and is instead designed to ensure that direct access customers cannot lean on the short response time, flexible capacity to balance their loads while cost-of-service customer shoulder the costs.

2. *The Commission Has the Jurisdictional Oversight and Authority to Approve the RIC.*

ESS scheduling practices fall squarely under the Commission's jurisdiction.[76] AWEC argued that the basis of the RIC is a FERC-jurisdictional charge already captured by PGE's imbalance charge under its OATT.[77] As PGE explained in testimony, the RIC is distinct from Energy Imbalance Service under Schedule 4R of PGE's OATT.[78] While Schedule 4R contains the ESS's "projection of its hourly Electricity deliveries, measured in megawatt-hours (MWh) that are necessary to meet the aggregate hourly load of its Customers," the ESS scheduling requirements are governed by Rule K of PGE's retail tariff, which is approved by the Commission.

Moreover, not only does the Commission have the authority to oversee the ESSs' scheduling practices, PGE believes that the Commission is well-suited to provide this

[73] *See* Calpine/100; Higgins/17.
[74] PGE/200; Sims-Tinker/35.
[75] *See* PGE/200, Sims-Tinker 32.
[76] *See* PGE's Rule K.
[77] AWEC/100; Mullins/13.
[78] PGE/300; Sims-Tinker/32.

oversight. The Commission already oversees the utility's resource procurement activities, utility cost recovery and rate design, as well as the direct access programs for which the ESS schedules are submitted. PGE does not dispute AWEC's assessment that ESSs schedule their energy to PGE and those schedules contain transmission reservations;[79] however, the fact that schedules are submitted does not make all practices and activities of direct access suppliers exclusively FERC-jurisdictional. PGE believes that it would be more consistent to have both the RIC and RAD overseen by the OPUC.

E. The Record is Sufficient in this Proceeding for the Commission to Approve PGE's Proposed Reliability Charges.

1. There is sufficient information in the record to resolve these important issues and approve PGE's proposal.

PGE has provided sufficient support to allow the Commission to approve Schedule 689 in this proceeding, including both the RIC and the RAD. In opening testimony, Staff originally seemed to favor delaying the NLDA program implementation to allow time to resolve these important direct access policy questions.[80] Staff then changed its position in rebuttal testimony and instead recommended that the Commission reject PGE's proposal.[81] Staff argues that even if PGE were to assess capacity charges for NLDA, incremental improvements to PGE's system resource adequacy would not occur for over a year and a half, by which time Staff estimates a direct access policy investigation may be complete.[82]

The purpose of UE 358 is to investigate PGE's Advice No. 19-02, which includes the proposed reliability charges and whether NLDA customers should pay their fair share to support resource adequacy in PGE's service territory. These issues have been thoroughly

[79] *See* AWEC/100, Mullins/13-14.
[80] *See* Staff/100; Gibbens/11.
[81] *See* Staff/300; Gibbens/2.
[82] Staff/300; Gibbens/4-5.

vetted in this proceeding through a robust evidentiary record, and PGE therefore seeks Commission action approving these charges in this proceeding.

PGE maintains that Staff's suggestion to consideration of the resource adequacy and reliability fairness issues introduces an unacceptable risk to resource adequacy. Planning and procurement are time-intensive efforts and such a delay will only exacerbate PGE's resource adequacy concerns while being unable to address them. Additionally, PGE is less optimistic that such a generic investigation with a wide array of issues would reach resolution in the timeframe described by Staff.

2. *Alternatively, should the Commission choose to investigate these issues further in a subsequent docket, the Commission should delay implementation of NLDA.*

As discussed in PGE's testimony, allowing NLDA to go into effect without changes to capacity planning and procurement would exacerbate the impending resource adequacy issues and undermine the integrity of the system.[83] Therefore, if the Commission believes that the issues in this proceeding warrant further investigation in another docket, PGE urges the Commission to delay implementation of the NLDA program to prevent unnecessary costs and risks to all customers. Ultimately, PGE supports an additional investigation into broader direct access policy for all direct access customers. The issues raised in this proceeding necessitate a full review of the existing direct access programs, but PGE does not support proceeding with an NLDA program pending such a full investigation.

Should the Commission choose to delay implementation of the NLDA program, PGE does not believe that potential customers would be unduly harmed. As described in PGE's testimony, customers in the queue could continue their business plans and start electric service

[83] PGE/200; Sims-Tinker/3.

while retaining the option to either become a cost-of-service customer, or participate in the NLDA program in the future.[84] This would ensure that the importance and responsibilities of reliability and resource adequacy as well as the equitable risk and cost allocation of resource adequacy are thoroughly explored in the overall direct access investigation. It would also provide interested customers the full terms and conditions of NLDA program participation, enabling that customer to make a more informed choice.

Allowing the NLDA program to go into effect before resolving these important issues would create problems for NLDA customers who would not know the full implications of their energy supplier choice. It would be unfair to these customers to make a financial decision that is not fully informed of all potential costs which could be later approved in a subsequent direct access investigation.

F. The Commission Should Approve PGE's Proposed Standard Offer Service Options

PGE proposes two energy options for NLDA customers: 1) a daily Mid-Columbia price index option plus an adder for renewable portfolio standard (RPS) compliance; and 2) a long-term standard offer which provides customers a purchase power agreement (PPA) option for procuring bundled renewable energy. In both cases, PGE's proposed energy offerings are consistent with OAR 860-038-0250, which directs PGE, as the electric company, to provide one or more standard offer rate options for large nonresidential retail electricity consumers. OAR 860-038-0250(2) requires that the standard offer rate be a tariff approved by the Commission and priced based on supply purchases made on a competitive basis from the wholesale market plus the transition adjustment, and must reflect the full costs of providing standard offer service.

---

[84] PGE/300; Sims-Tinker/10.

The purpose of the long-term energy option is to ensure that PGE is complying with Oregon's RPS requirements given that the PPA can be structured in such a way to accommodate the RPS bundled energy requirements and there is no index or structured market for RPS-compliant products.[85] PGE's current LTDA standard offer service option is a daily market index price option but does not consider RPS compliance because the RPS was not enacted when PGE first designed the standard offer option for the LTDA program. When designing the PGE-offering for NLDA, PGE identified this issue with respect to RPS compliance and is seeking to remedy it by proposing RPS-compliant standard offer options for NLDA participating customers.

Calpine argued that PGE's proposed long-term energy option would constitute a special contract because it would allow PGE to provide generation supply in accordance with individually negotiated prices.[86] PGE disagrees. PGE's proposal does not allow it to negotiate rates with customers or create specialized products.[87] Furthermore, this offering is justified by the need to comply with the RPS by accessing the wholesale market for RPS products, which are not index-based.[88]

Staff argues that this issue should be deferred to a future general rate case proceeding. This proceeding was opened specifically for the purpose of investigating PGE's NLDA filing and making a determination on the proposed tariff. Deferring action on the standard offer would place PGE in the position to choose between complying with the RPS requirement or shifting costs to cost-of-service customers. PGE's long-term energy option provides an RPS-compliant standard offer service option, which is cost-based and subject to a tariff

[85] *See* PGE/200; Sims-Tinker/45.
[86] Calpine/100; Higgins/25.
[87] PGE/200; Sims-Tinker/48.
[88] *See* PGE/200; Sims-Tinker/48.

approved by the Commission. PGE is complying with the Administrative Rules and simply seeking to comply with Oregon RPS requirements by offering compliant standard offer service options to NLDA customers only to meet their State mandated RPS target.

IV. CONCLUSION

PGE respectfully requests that the Commission approve PGE's Schedule 689, including the RIC, RAD, and long-term market energy option. In doing so, PGE requests that the Commission clarify that the Company should be permitted to include direct access loads into its planning process. PGE believes that the urgency of this issue coupled with the robust record in this docket support approval of PGE's request.

DATED this 14th day of November.

Respectfully submitted,

Erin E. Apperson,
OSB No. 175771
Assistant General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
(503) 464-8544 phone
(503) 464-2200 fax
erin.apperson@pgn.com