

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UE 358

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC
6 COMPANY,

7 Advice No. 19-02, New Load Direct Access
8 Program.

9 STAFF'S OPENING BRIEF

10 **I. INTRODUCTION**

11 The issue before the Commission in this case is whether to approve PGE's proposed New
12 Load Direct Access (NLDA) program. For the reasons discussed more fully below, Staff
13 recommends the Commission approve most aspects of PGE's NLDA program to go into effect
14 following the conclusion of this proceeding. Staff recommends that the Commission reserve
15 judgment on PGE's proposed capacity-related charges—the Resource Adequacy Capacity
16 Charge (RAD) and the Resource Intermittency Charge (RIC)—until after the conclusion of a
17 general investigation into resource adequacy as it relates to direct access. Staff also recommends
18 the Commission deny, without prejudice, PGE's proposal to make changes to its standard offer
19 products that would be applicable only to NLDA customers in this proceeding, and reserve
20 judgment until PGE's next general rate case when all potentially affected customers have had an
21 opportunity to participate. Staff also recommends the Commission direct PGE to inform
22 interested NLDA customers in the queue about the option to seek a waiver of the program cap, if
23 the basis for the potential customer's ineligibility is the lack of available space under the cap.
24 Finally, Staff recommends the Commission affirm its policy to limit NLDA customer eligibility
25 to load that has not been energized prior to taking NLDA service.

26 ///

///

///

1 **II. BACKGROUND**

2 In September 2018, the Commission adopted rules governing the New Large Load Direct
3 Access (NLDA) program in OPUC Docket No. AR 614,¹ which set forth the requirements
4 applicable to New Large Load consumers.² The Commission’s order also sets forth policies
5 intended to govern a utility’s NLDA program that were not addressed by the Commission’s
6 rules. Among those policies are the size of a utility’s participation cap (six percent of 2017
7 weather normalized load)³ and the ability for customers to make an application to exceed the
8 participation cap on a case-by-case basis, supported by good cause.⁴

9 PGE filed its Advice No. 19-02 on February 5, 2019, seeking approval of its proposed
10 NLDA program. With the exception of the issues discussed in testimony and briefing in this
11 case, Staff found PGE’s proposed NLDA program to implement accurately the Commission’s
12 NLDA program rules and directives as set forth in the AR 614 order. PGE’s NLDA program
13 proposal, however, contains additional charges and potential changes in policy that were not
14 contemplated or addressed by the Commission in AR 614. The testimony in this case, and thus
15 this brief, focuses on these issues.

16 ***1. Capacity-related charges***

17 Capacity-related charges for NLDA customers were not contemplated by the
18 Commission in its adoption of program rules. In this case, PGE proposes two-capacity related
19 charges: the RAD and the RIC.
20
21

22 ¹ See *In re Rulemaking Related to a New Large Load Direct Access Program*, OPUC Docket No.
AR 614, Order No. 18-341 (Sep. 14, 2018).

23 ² New Large Load means “any load associated with a new facility, existing facility, or an
24 expansion of an existing facility which: (a) has never been contracted for or committed to in
writing by a cost-of-service consumer with an electric company; and (b) is expected to result in
25 10 average megawatt[s] or more increase in the consumer’s power requirements during the first
three years after new operations begin.” OAR 860-038-0710(2).

26 ³ Order 18-341 at 7.

⁴ Order 18-341 at 7-8.

1 **A. The RAD**

2 The RAD is a “capacity-based charge to NLDA customers that reflects the cost of
3 maintaining and providing [resource adequacy].”⁵ PGE requests the charge in order to maintain
4 “resource adequacy and to prevent new, large loads from shifting reliability risks to our cost of
5 service customers.”⁶ The RAD is a non-bypassable charge, and would apply during all years of
6 service on Schedule 689, the Company’s NLDA schedule, and during Emergency Default
7 Service.⁷ RAD rates would be updated through pricing tariff updates. RAD rates are currently
8 set to zero, and would be determined in the Company’s next general rate case.⁸

9 PGE proposes to determine the capacity requirement for NLDA customers, to be
10 recovered by the RAD, by using the RECAP model, with and without NLDA loads, to determine
11 the incremental capacity needed to maintain its resource adequacy standard of 2.4 hours LOLE
12 per year. PGE proposes to procure resources consistent with the Commission’s Competitive
13 Bidding Rules, to the extent that additional capacity must be procured.⁹

14 In its Opening Testimony, PGE proposed to determine the cost of resource adequacy
15 based on the NLDA customers’ proportional share of capacity costs incurred after securing
16 incremental capacity resources.¹⁰ In its Reply Testimony, PGE proposed to introduce a new
17 “nonbypassable ‘reliability service’ functionalized category which will capture the costs
18 associated with providing resource adequacy.”¹¹ Thus, it became clear that PGE will not
19 necessarily obtain additional capacity for NLDA customers pursuant to the RAD charge, but

20 ⁵ PGE/300, Sims – Tinker/12.

21 ⁶ PGE/100, Sims – Tinker/15.

22 ⁷ PGE/100, Sims – Tinker/16.

23 ⁸ PGE/100, Sims – Tinker/16.

24 ⁹ PGE/100, Sims – Tinker/16 (In its Opening Testimony, PGE described the RAD as allowing
25 for “forward procurement of capacity resources and to allow sufficient time to secure additional
resources to avoid adverse impacts to system reliability.” *Id.* However, it is clear beginning in
PGE’s Reply Testimony that the RAD charge is not limited to cost recovery of incremental
capacity resources on behalf of NLDA customers.).

26 ¹⁰ PGE/100, Sims – Tinker/17.

¹¹ PGE/200, Sims – Tinker/14.

1 rather, the RAD charge would mitigate alleged cost-shifting between cost of service (COS)
2 customers and direct access customers that exists today.¹² PGE would use the functionalized
3 study to propose rates based on cost causation.¹³ If PGE procures resources for resource
4 adequacy, it will do so consistent with the Commission's Competitive Bidding Rules.¹⁴

5 In response to several parties' questions and concerns, PGE provided a partial alternative
6 to the RAD, which would partially or fully offset the RAD requirement: participation in a
7 demand response program as a means of voluntary curtailment.¹⁵

8 **B. The RIC**

9 PGE's proposed RIC is a charge intended to recover from NLDA customers the costs
10 associated with PGE's provision of intra-hour capacity to ESSs. The RIC is applied when the
11 ESSs' schedule is lower than the actual amount of associated customer load, as determined on an
12 ESS by ESS basis.¹⁶ The charge is set as a \$ per kW of on-peak charge, and does not distinguish
13 the cost by supplier or by customer. In other words, if triggered, the charge is the same for each
14 customer of an under-scheduling ESS, regardless of how much or how often the ESS under-
15 scheduled.

16 The cost for intra-hour capacity is based on the cost of capacity from PGE's IRP. PGE
17 determines the capacity requirement by analyzing a subset of historic Direct Access electricity
18 schedules and actual loads using the RECAP model. Using the historical data, PGE isolated the
19 hours where scheduled supply was less than actual load. These hours were then input into the
20 RECAP model as incremental load to determine the amount of additional capacity needed to

21 _____
22 ¹² PGE/200, Sims – Tinker/14.

23 ¹³ PGE/200, Sims – Tinker/14.

24 ¹⁴ PGE/100, Sims – Tinker/16 (In its Opening Testimony, PGE described the RAD as allowing
25 for "forward procurement of capacity resources and to allow sufficient time to secure additional
resources to avoid adverse impacts to system reliability." *Id.* However, it is clear beginning in
PGE's Reply Testimony that the RAD charge is not limited to cost recovery of incremental
capacity resources on behalf of NLDA customers.).

26 ¹⁵ PGE/200, Sims – Tinker/16.

¹⁶ PGE/100, Sims – Tinker/14.

1 maintain PGE’s reliability standard.¹⁷ For rates in this case, the identified capacity need was
2 multiplied by the net cost of incremental capacity from PGE’s IRP and converted to monthly on-
3 peak usage. PGE proposes to update the charge annually for a period of three years in order to
4 account for scheduling behavior changes, then every two years.¹⁸

5 ***2. Long-Term Energy Offer***

6 The Commission NLDA rules provide that New Large Load Direct Access Program
7 participants are subject to the requirements set forth in OAR 860-038-0250, which is the
8 Commission’s rule for Nonresidential Standard Offer.¹⁹ Pursuant to OAR 860-038-0250,
9 electric utilities offering direct access programs must provide one or more standard offer rate
10 options, one of which must be a non-emergency default supply option. Standard offer rate
11 options are intended to be utility-provided options to direct access service, different from cost of
12 service rates.²⁰ The Standard Offer rule requires utilities to develop standard offers for direct
13 access customers subject to certain requirements, including that “Rates must be established so
14 that costs associated with the development or offering of rate options are assigned to the retail
15 electricity consumers eligible to choose such rate options.”²¹ Utilities are precluded from
16 entering into special contracts for power supply.²² Special contracts are defined as “a rate
17 agreement that is justified primarily by price competition or service alternatives available to a
18 retail electricity consumer, as authorized by the Commission under ORS 757.230.”²³

19 In this proceeding, PGE proposes NLDA customers have two PGE-provided energy
20 supply options in addition to the option of third party direct access service—the PGE Daily

21 _____
22 ¹⁷ PGE/100, Sims – Tinker/14-15.

23 ¹⁸ PGE/100, Sims – Tinker/15.

24 ¹⁹ OAR 860-038-0720(1).

25 ²⁰ *See In re Rulemaking Proceeding to Implement SB 1149 Relating to Electric Restructuring*,
OPUC Docket No. AR 380, Order No. 00-596 (Sep. 28, 2006).

26 ²¹ OAR 860-038-0250(2)(f).

²² OAR 860-038-0260(3).

²³ OAR 860-038-0005(61).

1 Market Energy Option and the PGE Long-Term Energy Option.²⁴ PGE’s Daily Market Energy
2 Option is priced based on the Mid-Columbia daily index with a margin, with separate wheeling
3 and ancillary service charges and additional costs to meet Oregon’s Renewable Portfolio
4 Standard (RPS), and other applicable legislative requirements.²⁵ This service is substantially
5 similar to PGE’s existing Daily Price Option, except for the addition of cost-recovery for RPS
6 and other costs incurred to meet legislative requirements.²⁶

7 PGE’s Long-Term Energy Option, however, is a new standard offer product that would
8 be made available only to NLDA eligible customers at this time.²⁷ Under this option, PGE
9 would “engage in fair and transparent procurement efforts to secure a contracted resource to
10 meet the customer’s energy and legislative requirements.”²⁸ Customers would then pay a rate
11 that recovers the cost of the resource, plus a margin and any incremental costs, such as ancillary
12 services, via a supply agreement between the customer and the Company.²⁹ The customer would
13 pay PGE’s OATT rate for transmission and covered ancillary services, as well as the RIC and the
14 RAD charge.³⁰ Each customer would have its own Long-Term Energy Option rate. PGE argues
15 that it developed the Long-Term Energy Option “as a means of meeting state policy
16 requirements and customer needs to comply with legislative requirements, such as the [RPS].”³¹

17 **3. NLDA Cap**

18 In Order 18-341, the Commission adopted a six percent participation cap, based on
19 weather normalized annual load in calendar year 2017, and made the program cap distinct from
20

21 _____
24 PGE/100, Sims – Tinker/19.

22 ²⁵ PGE/100, Sims – Tinker/19.

23 ²⁶ PGE/200, Sims – Tinker/43; Staff/200, Soldavini/15.

24 ²⁷ PGE/100, Sims – Tinker/19.

25 ²⁸ PGE/100, Sims – Tinker/20.

26 ²⁹ PGE/100, Sims – Tinker/20.

27 ³⁰ PGE/100, Sims – Tinker/20.

28 ³¹ PGE/100, Sims – Tinker/20.

1 existing direct access programs.³² The Commission also indicated that it would consider
2 requests from customers to exceed the cap, upon application and a finding of good cause. The
3 Commission opined that a waiver of the cap may be appropriate “if an individual application
4 advances the goals reflected in state policy through elements such as carbon-free generation
5 resources, value-added grid services, and support for system capacity needs or through other
6 means.”³³

7 **4. Queue Implementation**

8 Neither the Commission’s NLDA rules nor its order adopting the rules speak to the
9 development and management of a queue for interested NLDA customers prior to adoption of a
10 final NLDA program. PGE requested Commission approval to develop a NLDA queue in
11 response to Staff’s and other parties’ concerns that additional process was necessary prior to
12 approval of an NLDA program for PGE. In Order No. 19-103, the Commission directed PGE to
13 “develop a nonbinding queue for customers interested in the New Load Direct Access process
14 during the pendency of the investigation.”³⁴ The Commission also ordered PGE to “file in this
15 docket no later than April 4, 2019, information describing the process for customer nonbinding
16 queue participation.”³⁵ On April 4, 2019, PGE filed its customer queue process.³⁶ However,
17 several additional queue management issues have been raised given the required customer notice
18 for enrollment in the program (the date of a binding written agreement with the utility for eligible

19
20 ³² Order 18-341 at 7.

21 ³³ Order 18-341 at 7. The Commission further noted that part of its justification for adopting a
22 cap “is the reality that cost-of-service customers are increasingly relied upon to finance system
23 improvements that impose near-term costs to adopt the system to new utility and customer-sited
24 technology intended to lead to long-term economic and environmental benefits for all customers.
Such is the case with demand response, storage initiatives, electric vehicles, and other
programming. If aspiring NLDA participants can support the system modernization efforts
through committed private action, then that action may provide part of the good cause
justification necessary to exceed the cap.” *Id.* at 8.

25 ³⁴ *In re Portland General Electric*, OPUC Docket No. UE 358, Order No. 19-103 at 2 (Mar. 22,
2019).

26 ³⁵ *Id.*

³⁶ UE 358 – PGE’s Letter Establishing Customer Queue Process for NLDA (Apr. 4, 2019).

1 new load or one year, whichever is earlier),³⁷ the requirement that the load be “new” (i.e. not
2 energized),³⁸ the ability or willingness of potential customers to delay operations in order to
3 maintain eligibility, and the duration of the Commission’s investigation into all aspects of PGE’s
4 NLDA program.

5 In its Opening Testimony, PGE proposed that customers in the NLDA program queue
6 would not be permitted to energize their site prior to the effective date of the Company’s NLDA
7 program.³⁹ PGE also proposed that a customer be permitted to maintain its place in the queue,
8 regardless of the time necessary to complete a transmission upgrade,⁴⁰ that an interested
9 customer’s place in the queue be non-transferrable,⁴¹ and that a customer could hold a place in
10 the queue for some future projected site.⁴² Finally, PGE proposed that if a customer’s load
11 exceeds the program cap, the customer be deemed ineligible for NLDA service, and would be
12 required to take service under the appropriate COS rate schedule. PGE also stated that it “will
13 only plan for the load up to the [a]mount stated in [the customers’] planning agreements with
14 [its] distribution planning.”⁴³

15 In its Reply Testimony, PGE indicated that it currently had six customers with total load
16 between 250 MWs and 612 MWa in its queue.⁴⁴ In response to concerns and arguments raised
17 by other parties, PGE updated and clarified its proposal as follows: (1) PGE will use the date the
18 customer entered the non-binding participation queue as the notice date so that the customer may
19 energize its operations no earlier than one year from that date;⁴⁵ (2) PGE agreed to hold a place

20 _____
21 ³⁷ OAR 860-038-0740(1).

22 ³⁸ OAR 860-038-0710(2).

23 ³⁹ PGE/100, Sims – Tinker/24.

24 ⁴⁰ PGE/100, Sims – Tinker/25.

25 ⁴¹ PGE/100, Sims – Tinker/25.

26 ⁴² PGE/100, Sims – Tinker/25.

27 ⁴³ PGE/100, Sims – Tinker/26.

28 ⁴⁴ PGE/200, Sims – Tinker/56.

29 ⁴⁵ PGE/200, Sims – Tinker/57.

1 in the queue for a customers determined to have forecasted load exceeding the amount available
2 under the cap, while the customer seeks a waiver;⁴⁶ (3) PGE’s current tariff provisions would
3 continue to govern PGE service options for customers leaving the non-binding queue;⁴⁷ (4) use
4 of construction power does not constitute energizing the customer site for purposes of customer
5 eligibility;⁴⁸ (5) PGE will not consider load ultimately determined to be ineligible in the program
6 cap, and will not hold space under the cap for load that is ultimately not realized (though still
7 eligible);⁴⁹ and (6) PGE will allow Staff or Commission review of operational documents, but
8 does not propose the Commission approve such documents.⁵⁰

9 In its Surrebuttal Testimony, PGE indicated its support for a waiver of the energization
10 requirement for customers currently in the queue, until all terms of the NLDA program are
11 known (including final determination on the RIC and the RAD, or other capacity-related
12 charges).⁵¹ PGE declined to provide an NLDA contract for Commission approval, but provided
13 the long term direct access (LTDA) customer contract to serve as a “starting template” for the
14 proposed NLDA customer contract.⁵²

15 III. ARGUMENT

16 (A) The Commission should decline to adopt the RIC and the RAD in this proceeding.

17 1. *Additional consideration and analysis of capacity-related charges for direct access* 18 *customers is necessary.*

19 As Staff acknowledged in its testimony in this case, the time is ripe to consider whether
20 the Commission’s current policies are adequate to address resource adequacy concerns.⁵³

21 ⁴⁶ PGE/200, Sims – Tinker/58.

22 ⁴⁷ PGE/200, Sims – Tinker/58.

23 ⁴⁸ PGE/200, Sims – Tinker/58.

24 ⁴⁹ PGE/200, Sims – Tinker/61.

25 ⁵⁰ PGE/200, Sims – Tinker/61-62.

26 ⁵¹ PGE/300, Sims – Tinker/26-28.

⁵² PGE/300, Sims – Tinker/32-33.

⁵³ Staff/100, Gibbens/5.

1 Reserving consideration of capacity-related charges for a generic investigation, such as
2 docket UM 2024, is appropriate for several reasons. First, it assuages Staff's, AWEC's and
3 Calpine's concerns related to due process, discriminatory rates, and Commission jurisdiction.⁵⁴
4 Second, it would allow for the establishment of Commission policy on a more holistic basis, by
5 allowing for further consideration and analysis on the existence and potential extent of cost-
6 shifting, whether such cost-shifting is warranted, the types of costs that are potentially
7 unrecovered and a deeper understanding/clarification of the types of costs that currently
8 approved charges are intended to recover, which would avoid potentially duplicative charges.
9 Third, investigation would allow for consistent treatment in program mechanics among
10 participating utilities, such as the appropriate methodology for determining resource adequacy
11 requirements.⁵⁵ Fourth, a generic investigation would allow for consideration of whether other
12 direct access program requirements should be adjusted, such as the Commission's rule related to
13 provider of last resort obligations. Finally, on all of these issues, the Commission would also
14 have the benefit of additional perspectives, including those from other energy utilities and
15 customers not engaged in this proceeding.

16 Importantly, Staff, AWEC, Calpine and PGE all agree that additional investigation into
17 capacity-related charges for NLDA customers, as well as LTDA customers, is warranted and
18 should take place in a generic proceeding such as docket UM 2024.⁵⁶ CUB's testimony did not
19 address this issue, but CUB has not testified to an objection for further investigation. Assuming
20 capacity-related charges are addressed in a generic investigation, the Commission must
21 determine whether to implement PGE's NLDA program before the conclusion of the
22 investigation, and if so, under what conditions.

23 ///

24 ///

25 ⁵⁴ These issues are more fully discussed in the remainder of this brief.

26 ⁵⁵ See e.g. AWEC/200, Mullins/5.

⁵⁶ Calpine Solutions/300, Higgins/4; AWEC/200, Mullins/2

1 2. *The Commission should implement PGE's NLDA program, without the RIC and*
2 *the RAD, while a generic investigation into capacity-related charges is pending.*

3 Calpine urges the Commission to implement the NLDA program without PGE's
4 proposed RIC and RAD charges, similar to PacifiCorp's NLDA program, pending the
5 investigation.⁵⁷ AWEC also argues that implementation should not be delayed pending the
6 outcome of a generic investigation,⁵⁸ and that customers should not be assessed the RIC or the
7 RAD charge before the conclusion of the investigation.⁵⁹ Staff also supports implementation of
8 the NLDA program, without the RIC and the RAD, pending the outcome of a generic
9 investigation.⁶⁰

10 PGE alone argues that the Commission should delay implementation of its NLDA
11 program pending the outcome of the generic investigation over concerns that Schedule 689
12 charges would not provide appropriate price signals to NLDA customers and would likely lead to
13 resource adequacy issues.⁶¹ As discussed in Staff's Rebuttal and Cross-Answering Testimony,
14 these concerns are unpersuasive for several reasons.

15 Regarding price signals and the RIC, PGE's position is undercut by the fact that
16 customers have no direct ability to reduce or otherwise avoid the charge based on their own
17 behavior. This issue is discussed more fully below. For price signals and the RAD, customers
18 will not receive any price signals by virtue of the Commission's approval of PGE's proposed
19 tariffs in this case, as the RAD charge is set to \$0 and would not be updated until the Company's
20 next general rate case—very likely not before January 1, 2021.

21
22 _____
23 ⁵⁷ Calpine Solutions/300, Higgins/4.

24 ⁵⁸ AWEC/100, Mullins/2.

25 ⁵⁹ AWEC/200, Mullins/4.

26 ⁶⁰ Staff/300, Gibbens/3. Staff notes, however, that delayed implementation of PGE's NLDA
program is preferable to approval of the RIC and the RAD in this proceeding. *Id.* See also
Staff/300, Gibbens/6.

⁶¹ PGE/200, Sims – Tinker/12.

1 Delayed implementation of the RAD is also unlikely to exacerbate any potential resource
2 adequacy issues. NLDA customers must provide notice prior to energizing, and it is likely that
3 infrastructure construction or upgrades would be necessary to service the load, which takes time.
4 This mitigates any short-term resource adequacy concerns. Also, the Commission could direct
5 parties to investigate resource adequacy issues and capacity charges in an initial phase of the UM
6 2024 or other generic direct access investigation, which would allow for timely resolution of
7 these issues.

8 Staff's position is that the NLDA program should not suffer from further delayed
9 implementation and that the Commission should not make a final determination on the RIC or
10 the RAD in this case.⁶² Given these two recommendations, and the fact that there does not
11 appear to be great risk to cost of service customers in the short-term for PGE's NLDA program
12 to go into effect without the RIC and the RAD, Staff urges the Commission implement PGE's
13 NLDA without capacity charges as soon as practicable. However, if the Commission determines
14 that the risk to COS customers is too great and that PGE's NLDA program cannot be
15 implemented without the RIC and the RAD at least on an interim basis, Staff recommends the
16 Commission adopt PGE's NLDA program as proposed with customers retaining the option to
17 mitigate the charges under certain conditions.⁶³

18
19 **(B) Should the Commission choose to substantively consider capacity charges in this
proceeding, PGE's proposed RIC and RAD charges should be denied.**

20 As stated above, Staff has agreed with PGE that resource adequacy concerns are ripe for
21 Commission consideration, and does not dispute that providing capacity comes at a cost which
22 must be insulated against unwarranted cost-shifting. However, Staff continues to have serious
23 concerns about PGE's proposed solutions to capacity-related concerns—namely the RIC and the
24

25
26 ⁶² Staff/300, Gibbens/6.

⁶³ Staff/300, Gibbens/5-6.

1 RAD.⁶⁴ Should the Commission determine that the RIC and RAD warrant substantive
2 consideration in this case, both the capacity-related charges should be denied.

3
4 ***1. Energy capacity is considered a competitive service under Oregon’s direct access laws.***

5 ORS 757.601 requires that all non-residential consumers shall be allowed direct access.
6 Direct access is defined as “the ability of a retail electricity consumer to purchase *electricity* and
7 certain *ancillary services*, as determined by the commission for an electric company or the
8 governing body of a consumer-owned utility, directly from an entity other than the distribution
9 utility.”⁶⁵ *Electricity* is defined as “electric energy, measured in kilowatt-hours, or electric
10 capacity, measured in kilowatts, or both.”⁶⁶ *Ancillary services* are defined as “services necessary
11 or incidental to the transmission and delivery of electricity from generating facilities to retail
12 electricity consumers, including but not limited to scheduling, load shaping, reactive power,
13 voltage control and energy balancing services.”⁶⁷

14 Both of PGE’s proposed capacity charges would *require* the NLDA customer to procure
15 capacity-related services from PGE. While Staff agrees with PGE that Oregon direct access law
16 does not prohibit a direct access customer “from paying for capacity resources procured by the
17 distribution utility,”⁶⁸ it does provide direct access customers have the *right* to purchase both
18 energy and capacity from a provider other than the incumbent utility. Non-residential customers
19 must be allowed the ability to purchase energy, capacity, and ancillary services as defined by the
20 Commission, directly from an entity other than the distribution utility. By design, both PGE’s
21 RIC and RAD are required charges. The fact that the RIC may not be triggered does not
22 overcome the fact that if it is, the customer has no choice but to purchase intra-hour capacity

23 ⁶⁴ Staff notes that the existence of a capacity shortage in the Northwest is not dispositive to its
24 analysis in this case.

25 ⁶⁵ ORS 757.600(6) (emphasis added).

26 ⁶⁶ ORS 757.600(14).

27 ⁶⁷ ORS 757.600(2).

28 ⁶⁸ PGE/200, Sims – Tinker/28.

1 from PGE. And the fact that the RAD may be partially or fully offset by participation in an
2 industrial demand response program does not overcome the fact that the charge is non-
3 bypassable. As such, PGE's proposed RIC and RAD charges appear to conflict with the
4 requirements of ORS 757.601 and should be denied.⁶⁹

5 **2. The Federal Energy Regulatory Commission has jurisdiction over wholesale rates.**

6 As described above, PGE's RIC is intended to recover the costs of reserving the intra-
7 hour capacity, generated on PGE's system (or through contracts), necessary to maintain system
8 balance when an ESS under-schedules load.⁷⁰ PGE recovers the energy costs associated with
9 intra-hour balancing services from ESSs through its FERC-approved tariff, but argues that its
10 FERC rate does not compensate the Company for capacity costs.⁷¹

11 In testimony, Staff, AWEC and Calpine raise concerns that costs associated with ESS
12 under-scheduling may be more appropriately addressed by FERC, through modification of
13 PGE's OATT or otherwise.⁷² PGE testified at the hearing that it has not sought relief at FERC
14 because its "belief is that we're talking about resource adequacy and the capacity necessary to
15 provide that, whether it's through the RAD or through the proposed RIC, and that that has a
16 direct nexus to state policy as it relates to NLDA and the utility's responsibilities under provider
17 of last resort; that it's appropriate for the Public Utility Commission to make that
18 determination."⁷³

19 PGE has not provided a clear legal basis for the Commission to adopt retail rates for
20 direct access customers that recover costs associated with providing intra-hour capacity to
21 ESSs,⁷⁴ which appears to be a wholesale service subject to FERC jurisdiction, similar to Energy

22 _____
⁶⁹ See also Calpine Solutions/100, Higgins/17.

23 ⁷⁰ See also Hearing Tr. at 79-80.

24 ⁷¹ PGE/200, Sims – Tinker/35.

25 ⁷² Staff/400, Soldavini/3-4; Calpine Solutions/100, Higgins/16; AWEC/100, Mullins/15;
AWEC/200, Mullins/15.

26 ⁷³ Hearing Tr. at 78.

⁷⁴ Hearing Tr. at 78-79.

1 Imbalance Service, which is governed by Schedule 4R in PGE's OATT. Instead, PGE
2 inappropriately attempts to sidestep legal constraints by focusing on policy arguments. Further,
3 it appears that PGE is attempting to fix issues it perceives with its OATT rate not recovering all
4 costs related to providing intra-hour services to ESSs, but without going to FERC. Staff finds
5 this perplexing, particularly given PGE's historical success with adopting and/or revising OATT
6 charges.⁷⁵ Although Staff is generally understanding of the cost-shifting concerns raised by
7 PGE, it cannot recommend Commission adoption of a rate that appears to be properly within the
8 jurisdiction of FERC, particularly in light of PGE's decision not to seek recourse from FERC
9 given its purported detrimental effect on cost of service customers.

10 ***3. The RIC charge, as proposed, would not result in just and reasonable rates, and***
11 ***may be unduly discriminatory.***

12 Should the Commission decide to make a substantive determination on capacity-related
13 charges in this proceeding, Staff continues to recommend that the RIC be denied.⁷⁶ Rejection of
14 the RIC is necessary for several reasons.

15 First, if the RAD is also approved, adoption of the RIC may result in double-charging
16 customers.⁷⁷ If no additional capacity is acquired in order to provide intra-hour capacity to ESSs
17 that have under-scheduled, and peaking demand is addressed through planning and allocated
18 based on the RAD, Staff fails to understand how the RAD would not be flexible enough to meet
19 RIC needs.⁷⁸ PGE makes bare assertions that the RIC and the RAD are intended to capture costs
20 related to two different scenarios in which direct access customers rely on PGE for capacity—
21 peaking and balancing,⁷⁹ but failed to provide evidence that the assets used to provide resource
22 adequacy and intra-hour capacity are not, at least in some instances, the same.⁸⁰ In fact, at the

23 ⁷⁵ AWEC/200, Mullins/15; AWEC/201 (PGE's Response to AWEC DR 026).

24 ⁷⁶ Staff/400, Soldavini/16.

25 ⁷⁷ Staff/200, Soldavini/7-10; Staff/400, Soldavini/6-8; Calpine/100, Higgins/18.

26 ⁷⁸ Staff/400, Soldavini/Soldavini/8.

⁷⁹ PGE/200, Sims – Tinker/33-34.

⁸⁰ Staff/400, Soldavini/8.

1 hearing, PGE's witnesses testified that PGE will determine in RECAP if the RAD resource needs
2 to be "fast responsive" or "reactive" or "would be more of a hours-ahead or day-ahead unit
3 commitment" type of resources,⁸¹ but then later testified that the difference between the RIC and
4 the RAD is that the RIC is fast response and the RAD is hours ahead.⁸² Not only are these two
5 statements inconsistent, but this also demonstrates that fast response capacity could be procured
6 for the RAD but actually utilized for circumstances covered by the RIC.

7 AWEC and Calpine share Staff's concerns on the potentially duplicative nature of the
8 RIC.⁸³ Calpine argues that "if a RAD charge or requirement is adopted for NLDA customers,
9 then PGE's argument that capacity needed for imbalance service must necessarily rely on
10 capacity built for cost-of-service customers falls apart. PGE tries to confound this obvious
11 conclusion by contending that the RAD capacity it would acquire (and force NLDA customers to
12 purchase) might not be sufficiently flexible to provide energy imbalance service."⁸⁴ AWEC
13 raises concerns that PGE's proposed RIC is duplicative of charges contained in the Company's
14 OATT.⁸⁵

15 Second, the RIC charge is also not consistent with principles of cost-causation.⁸⁶ The
16 RIC imposes on NLDA customers charges related to ESS scheduling practices over which the
17 NLDA customer has no control. PGE attempts to overcome this by arguing that the customer
18 and the ESS can contract around the imposition of the charge;⁸⁷ however, the fact that the
19 customer may find some method to ultimately mitigate or avoid the charge through its own
20 contracting power with the ESS is not a basis upon which the Commission can conclude that the
21 charge is just and reasonable in the first place. The Commission is statutorily required to ensure

22 ⁸¹ Hearing Tr. at 28.

23 ⁸² Hearing Tr. at 84.

24 ⁸³ Calpine Solutions/300, Higgins/9-10; AWEC/100, Mullins/13-14.

25 ⁸⁴ Calpine Solutions/300, Higgins/10.

26 ⁸⁵ AWEC/100, Mullins/13-14.

27 ⁸⁶ Staff/400, Soldavini/10-15.

28 ⁸⁷ Staff/400, Soldavini/11; PGE/200, Sims – Tinker/41.

1 that the rates charged to customers are fair and reasonable, which is traditionally done in
2 consideration of cost-causation principles. In the case of the RIC, the price signal is
3 inappropriately placed on the customer, rather than the entity responsible for causing the
4 charge.⁸⁸ And the price signal is not even effective, as the charge does not depend on the
5 frequency or the magnitude of scheduling imbalances.⁸⁹ The extent of this issue becomes even
6 more apparent when one considers that a LTDA customer could trigger the RIC for an NLDA
7 customer.⁹⁰ PGE attempts to overcome these criticisms by arguing that ESS scheduling will
8 improve over time, thereby allowing customers to potentially avoid the charge.⁹¹ But as Staff,
9 AWEC and Calpine have all testified, it is doubtful that ESSs will be incentivized to improve
10 scheduling,⁹² particularly given PGE's proposed standard for triggering the full monthly charge
11 (a single under-scheduled hour).⁹³

12 Third, the RIC charge appears to be an attempt to have the Commission indirectly
13 regulate ESS scheduling practices,⁹⁴ which raises questions of Commission jurisdiction. PGE
14 has provided no argument or evidence regarding Commission authority over ESS scheduling
15 practices.

16 Fourth, the RIC charge is also one-sided, in that it does not compensate customers if the
17 ESS has over-scheduled.⁹⁵ AWEC argues that under-scheduling by an ESS may even serve to
18 benefit PGE and its COS customers, but the RIC would nevertheless charge NLDA customers
19 for capacity that PGE never had to hold in reserve.⁹⁶

20
21 ⁸⁸ Staff/400, Soldavini/10-11.

22 ⁸⁹ Staff/400, Soldavini/11.

23 ⁹⁰ Hearing Tr. at 36.

24 ⁹¹ PGE/200, Sims – Tinker/30.

25 ⁹² Staff/400, Soldavini/14-15.

26 ⁹³ Staff/400, Soldavini/12-13.

27 ⁹⁴ Staff/400, Soldavini/12-15.

28 ⁹⁵ Staff/400, Soldavini/10.

29 ⁹⁶ AWEC/200, Mullins/15.

1 Finally, the RIC may lead to discriminatory rates. Both Staff and AWEC raised concerns
2 that it may be discriminatory for only a subset of direct access customers to be assessed a charge
3 when the other classes of direct access customers would place the same alleged cost on the
4 system.⁹⁷ In response to this concern, PGE relies solely on the fact that NDLA customers and
5 other direct access customers are part of different customer classes, and therefore, it is not
6 possible that the RIC could be discriminatory.⁹⁸ PGE's reliance on the fact that there are two
7 distinct customer classes is misplaced. PGE appears to conflate the Commission's authority to
8 create customer classes based on distinct characteristics⁹⁹ with PGE's obligation to charge
9 customers rate or amounts for services that are the same as the rates or amounts for services for
10 customers taking like and contemporaneous service under substantially similar circumstances.¹⁰⁰
11 Regardless of whether there are one, two or ten different customer classes, if they are all placing
12 the same cost on the system, it is discriminatory not to charge all customers similarly.¹⁰¹

13 ***4. The RAD charge, as proposed, would not result in just and reasonable rates and***
14 ***may be unduly discriminatory.***

15 In addition to the legal concerns raised above related to requiring direct access customers
16 to purchase capacity products from PGE, Staff has several other concerns related to PGE's
17 proposed RAD charge.

18 First, Staff is concerned that there is not sufficient evidence on the record in this
19 proceeding upon which the Commission can conclude that PGE's proposed RAD would result in
20 fair, just and reasonable rates.¹⁰² It has been difficult to pinpoint exactly what NDLA customers
21 would be paying for through the RAD charge, as PGE's position seems to have evolved over

22 _____
⁹⁷ Staff/400, Soldavini/8-10; AWEC/200, Mullins/13-14.

23 ⁹⁸ PGE/200, Sims – Tinker/37.

24 ⁹⁹ ORS 757.230.

25 ¹⁰⁰ ORS 757.310.

26 ¹⁰¹ Staff/400, Soldavini/9.

¹⁰² ORS 757.210(1)(a) (“The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.”).

1 time. As Staff understands PGE's current proposal and justification for the RAD, it is to address
2 potential cost-shifting from NLDA customers to COS customers for the resource adequacy that
3 COS customers pay for, and to ensure that any future resources acquired that contribute to
4 resource adequacy for NLDA customers are paid for by those customers. It has become clear
5 that PGE no longer seeks to justify the RAD solely on a Commission finding that there is or will
6 soon be substantial diminishing capacity in the Northwest,¹⁰³ but rather, seeks to have the
7 Commission identify and assign a cost to resource adequacy. This appears to be an entirely new
8 undertaking,¹⁰⁴ and one that leaves the parties to this case with many questions and few answers.

9 Fundamental to the issue of resource adequacy is whether NLDA customer, or direct
10 access customer generally, relies on PGE to provide resource adequacy. Or if it does currently,
11 will it always? Should the customer have options? There is not agreement among the parties on
12 the answers to these questions. As Calpine questioned, under what circumstances would NLDA
13 customers actually rely on PGE to provide capacity that is not otherwise addressed by an existing
14 Commission rule or approved direct access charge?¹⁰⁵ And what is the extent of the charge? As
15 AWEC asked at the hearing, should such requirements be imposed on all load serving entities?¹⁰⁶
16 Is it equitable to pick and choose only certain customers? Would waiver of the Company's
17 Provider of Last Resort Obligations effectively address PGE's concerns regarding resource
18 adequacy? Would adoption of a Commission policy that PGE can discriminate in curtailing
19 direct access load address PGE's concerns? Neither PGE's nor CUB's testimony in support of
20 the RAD in this case provide sufficient evidence and analysis in support of the answers to these
21 questions so that the Commission can definitively conclude that the RAD is just and reasonable.
22 Rather, both PGE and CUB rely on broad policy statements and arguments in support of their

23

24 _____
¹⁰³ Hearing Tr. at 16-18.

25 ¹⁰⁴ See e.g. AWEC/100, Mullins/8.

26 ¹⁰⁵ Calpine Solutions/100, Higgins/9.

¹⁰⁶ Hearing Tr. at 22.

1 positions. PGE has failed to carry its burden demonstrating that the RAD would result in fair,
2 just and reasonable rates. For this reason, it should be denied.

3 Second, Staff is concerned that the magnitude of the charge is not justified by the
4 problem PGE has determined must be solved.¹⁰⁷ At an estimated \$9/kW of monthly on-peak
5 demand, which is equivalent to \$1.3 million per added day of reliable power, the RAD is greater
6 than twice as much as distribution charges, on-peak charges, and the RIC combined.¹⁰⁸ This is
7 concerning given that NLDA customers may not be relying, or at least entirely relying, on PGE
8 to provide resource adequacy. PGE nevertheless argues that it is “best suited” to act as the
9 provider of resource adequacy because it 1) can support system wide resource adequacy at a
10 lower cost, 2) use an effective combination of resources, including demand side measures, to
11 support resource adequacy; 3) has exclusive responsibility and control of the balancing authority;
12 and 4) is actively regulated under broad Commission authority including transparent and public
13 disclosure.¹⁰⁹ None of PGE’s reasons support PGE’s conclusion that the RAD charge should be
14 mandatory and non-bypassable by direct access customers—rather, to the extent that these
15 reasons are true, would only speak to why a direct access customer may find it most beneficial to
16 procure resource adequacy, if necessary, through PGE.

17 Third, it is unclear how the RAD may overlap with other current or proposed charges, or
18 whether additional ratemaking mechanisms may be necessary. In addition to concerns that the
19 RIC may be duplicative of the RAD (or vice versa) as discussed above, Staff also has concerns
20 that the Company’s proposed Energy Supply Return Charge may be partially or wholly
21 unnecessary should the Commission adopt the RAD charge,¹¹⁰ and questions whether transition
22 charges already compensate COS customers for at least some level of resource adequacy.¹¹¹

23 _____
¹⁰⁷ Staff/100, Gibbens/14-16.

24 ¹⁰⁸ Staff/100, Gibbens/15.

25 ¹⁰⁹ PGE/200, Sims – Tinker/26.

26 ¹¹⁰ Staff/200, Soldavini/20-23.

¹¹¹ Transition charges in the NLDA program are designed to recover potential costs associated with, among other things, “the actions taken by cost-of-service customers that create the

1 AWEC raises concerns that absent some new type of crediting mechanism, NLDA customers
2 would not receive the functionalized benefits associated with the resource adequacy resources
3 that they pay for through PGE's proposed cost-allocation.¹¹² In ratemaking, benefits and burdens
4 are generally matched.

5 Finally, Staff and AWEC are concerned that adoption of the RAD in this proceeding may
6 raises due process concerns and may result in discriminatory rates.¹¹³ The RAD is intended to
7 address resource adequacy issues from customers that are "not required to contribute to the
8 system's reliability requirements"¹¹⁴ which would necessarily apply to LTDA customers as well
9 as NLDA customers (at least once LTDA customers have completed making transition
10 payments). LTDA programs are not the subject of this proceeding. As succinctly argued by
11 AWEC, if the Commission approves the RAD in this docket, "there is no rational basis not to
12 apply it to LTDA customers once the stipulation freezing PGE's LTDA program expires. The
13 RAD would then be imposed on LTDA customers as a *fait accompli* due to the Commission's
14 determination in this Docket—a Docket current LTDA customers may have no interest in or
15 even awareness of."¹¹⁵

16 Staff's concerns are not sufficiently mitigated by the fact that PGE has proposed a way
17 for NLDA customers to potentially offset some or all of the RAD charge—enrollment in an
18 industrial demand response program.¹¹⁶ While Staff appreciates that PGE has considered a
19 solution to address concerns about the mandatory, unavoidable nature of the RAD, Staff finds
20 PGE's proposal to be too premature for adoption in this proceeding, and potentially

21

22 possibility of the New Large Load Direct Access Program (NLDA) option, including
23 procurement of reserves that, in part, serve the purpose of facilitating default service, if
24 necessary." Order 18-341 at 3.

24 ¹¹² AWEC/100, Mullins/11-12.

25 ¹¹³ Staff/100, Gibbens/5-6; AWEC/100, Mullins/10-11.

26 ¹¹⁴ PGE/100, Sims – Tinker/3.

27 ¹¹⁵ AWEC/100, Mullins/9-10.

¹¹⁶ PGE/200, Sims – Tinker/16.

1 problematic.¹¹⁷ Participation in PGE's Schedule 26 would potentially curtail NLDA customers
2 for non-RAD related events. COS participants would benefit through the credit and lower power
3 cost rates due to peak shaving, but NLDA customers could help shave a peak, and subsidize COS
4 customers in the process. PGE's objection regarding timing is also unpersuasive, because the
5 RAD resource could be either an hours-ahead/day-ahead resource as testified by PGE at the
6 hearing.¹¹⁸ Resource adequacy, according to PGE, is a planning issue (i.e. long-term), and not a
7 next hour problem that would require immediate action, it must be known further into the future,
8 which would provide time for notification and demand response implementation.¹¹⁹ If
9 implemented, participation in a demand response program would need to be separate from PGE's
10 other customers, designed specifically to address the problem that the RAD is trying to solve.
11 PGE's demand response program should only curtail customers when a RAD resource would
12 otherwise have been used. PGE's demand response proposal does not achieve this goal.

13 **(C) Changes to PGE's standard offer options, including the addition of PGE's Long-**
14 **Term Energy Offer, should be evaluated in a general rate case proceeding or**
15 **general direct access investigation.**

16 As discussed above, PGE proposed two changes to its currently approved standard offer
17 for direct access programs, which would be applicable only to NLDA customers in this
18 proceeding.¹²⁰ First, PGE proposes to include the cost of RPS compliance in standard offer
19 products offered to NLDA customers. Second, PGE proposes a new standard offer product—the
20 Long-Term Energy Offer.

21
22 ¹¹⁷ Staff/300, Gibbens/8-9.

23 ¹¹⁸ Hearing Tr. at 28.

24 ¹¹⁹ PGE/100, Sims – Tinker/5.

25 ¹²⁰ In its Reply Testimony, PGE's conclusion to testimony argued that standard offer service
26 options for NLDA customers should be included in a separate investigation. PGE/200, Sims –
Tinker/63. However, that is the only reference in testimony that Staff is able to find to this
proposal, and it appears to be directly contradicted by PGE's other testimony on this issue. As
such, Staff assumes that PGE's position remains that the Commission should consider standard
offer issues in this proceeding.

1 While Staff generally supports PGE's inclusion of RPS compliance costs in Company
2 supplied energy options, as required by law or Commission policy, it has concerns about doing
3 so in this proceeding.¹²¹ PGE's position appears to be that RPS compliance costs should apply to
4 all direct access customers.¹²² As such, PGE's proposal amounts to a change in its direct access
5 programs, generally, and should be evaluated in a proceeding in which all potentially affected
6 customers have been provided notice and when such charges may be applied equally to all direct
7 access customers. Delaying RPS compliance charges for NLDA customers until PGE's next
8 general rate case proceeding, who have not yet begun to take service and will pay opt-out
9 charges for 60 months, is unlikely to cause any cost-shifting.¹²³

10 Staff is also concerned with the implementation of a new standard offer product in this
11 case for several reasons. First, all potentially affected customers have not been provided with
12 notice and an opportunity to substantively engage on PGE's proposal, given the limited scope of
13 this proceeding. Staff does not find PGE's results-oriented approach to customer notice concerns
14 persuasive¹²⁴—other customers, not currently on direct access, may be considering taking service
15 under a standard offer and may wish to substantively engage on potential changes.

16 Second, Staff shares Calpine's concern that PGE's new Long-Term Energy Offer may
17 constitute a special contract, based on its proposed tariff language which states: "Prices for this
18 option will be specified in a negotiated contract between the Customer(s) and the Company."¹²⁵
19 Special contracts are not permissible under OAR 860-038-0260(3). PGE argues it will not be
20 negotiating rates with customers or creating specialized products, and therefore, the Long-Term
21 Energy Offer does not constitute a special contract.¹²⁶ Rather, PGE argues that this product is

22

23 ¹²¹ Staff/200, Soldavini/25-26.

24 ¹²² PGE/200, Sims – Tinker/47-48.

25 ¹²³ Staff/400, Soldavini/28-29.

26 ¹²⁴ PGE/200, Sims – Tinker/46.

¹²⁵ Staff/400, Soldavini/25, citing to PGE's proposed Tariff Sheet No. 689-5.

¹²⁶ PGE/200, Sims – Tinker/48.

1 appropriate because it provides a long term RPS compliant product to NLDA participating
2 customers.¹²⁷ Based on PGE's clarification, Staff shares Calpine's concerns that PGE's Long-
3 Term Energy Option may not be meaningfully different from its proposed green tariff offering,
4 which is subject to its own program design requirements,¹²⁸ and finds that PGE's tariff language
5 needs additional clarification to more accurately reflect PGE's stated intent for this product.

6 Third, Staff shares Calpine's concerns that allowing PGE to offer a competitive product
7 may allow PGE to exercise market power, and therefore supports Calpine's suggestion that any
8 specialized product offerings to interested customers should be done through an unregulated
9 affiliate for the purpose of providing ESS-type services.¹²⁹

10 Finally, Staff notes that PGE's reliance on the fact that NLDA customers and LTDA
11 customers are different customer classes as a justification for why different standard offers is not
12 unduly discriminatory is misplaced.¹³⁰ As discussed previously, ORS 757.310 precludes a public
13 utility from charging a customer a rate or an amount for a service that is different from the rate or
14 amount the public utility charges any other customer for a like and contemporaneous service
15 under substantially similar circumstances. NLDA customers and LTDA customers are similarly
16 situated with regard to the ability to take service pursuant to a standard offer, and PGE has
17 offered no testimony or evidence as to why the basis for creating distinct customer classes is
18 similarly a basis to offer different standard offers to similarly situated customers. In fact the
19 opposite is true—PGE states that it intends to standardize its standard offer in a future
20 proceeding¹³¹ and that it has not made such a proposal in this case because it is precluded from
21 doing so pursuant to a settlement in its last general rate case.¹³² Therefore, the only basis for

22
23 ¹²⁷ PGE/300, Sims – Tinker/33-34.

24 ¹²⁸ Calpine Solutions/300, Higgins/13.

25 ¹²⁹ Staff/400, Soldavini/25.

26 ¹³⁰ PGE/200, Sims – Tinker/46; *see also* PGE/200, Sims – Tinker/9.

¹³¹ PGE/200, Sims – Tinker/46.

¹³² PGE/100, Sims – Tinker/8-9.

1 PGE offering different standard offers to customers at different times is one of timing. In order
2 to ensure that rates are not discriminatory, the Commission should address PGE's standard offers
3 in a general rate case proceeding when changes to PGE's other direct access programs are
4 appropriate.

5 For these reasons, Staff recommends that the Commission reject, without prejudice, both
6 of PGE's standard offer proposals in this case, as they raise concerns with due process and
7 discriminatory rates. Additionally, PGE's proposed Long-Term Energy Offer also appears to
8 violate the Commission's policy against special contracts. The Commission should evaluate
9 proposed changes to PGE's standard offer in its next general rate case proceeding or generic
10 direct access investigation as appropriate.

11 **(D) The Commission should direct PGE to make ineligible customers aware of their**
12 **right to seek a waiver of the participation cap.**

13 As described above, the Commission set the program cap at six percent of PGE's 2017
14 weather normalized load.¹³³ In so doing, the Commission also adopted a policy to consider
15 waivers to the program cap, which may be granted upon a finding of good cause.¹³⁴ The
16 Commission set forth examples of circumstances under which a waiver may be appropriate,
17 including when a customer demonstrates that state policy goals, such as carbon-free generation
18 resources, value-added grid services, and support for system capacity needs or through other
19 means, would be advanced through its participation in a utility's NLDA program.¹³⁵

20 PGE argues that it should not be saddled with the obligation to inform NLDA customers,
21 otherwise eligible for the program, of their right to seek a waiver of the program cap because
22 PGE has observed that current and potential direct access customers "are very adept at
23 understanding energy pricing, supply optionality, and understand how to leverage the DA rules

24
25 ¹³³ Order 18-341 at 7.

26 ¹³⁴ Order 18-341 at 7.

¹³⁵ Order 18-341 at 7.

1 to their advantage.”¹³⁶ PGE goes on to testify that it “see[s] no reason why PGE ought to be the
2 conduit to interpret and inform customers on their potential opportunities to seek a waiver for
3 NLDA given their advance[d] understanding of energy markets and regulatory/tariff matters.”¹³⁷

4 PGE should be required to inform customers of program requirements and related
5 Commission policies, including the possibility of a program cap waiver. PGE should act to
6 inform customers of the Commission’s policy, in the circumstance that the only reason a
7 customer is ineligible is due to the remaining room under the cap.

8 **(E) NLDA-eligible customers in the queue that energize prior to program**
9 **implementation should be deemed ineligible for the NLDA program.**

10 Staff is generally supportive of PGE’s proposed queue implementation and management,
11 as set forth in its testimony in this proceeding. The only exception is PGE’s proposal to allow
12 NLDA customers in the queue that have energized operations to continue to be eligible for
13 NLDA program participation. Staff continues to recommend that the Commission adhere to the
14 bright-line approach that requires customers to bring entirely, un-planned for and un-served load
15 in order to be eligible. Staff understands that PGE’s proposal is in response to allow load that
16 may ultimately be served by NLDA program rates, but which takes service pursuant to COS
17 schedules during an interim period, creates concerns for COS customers because this load is
18 either not planned for (and therefore exacerbating cost-shifting and resource adequacy risks
19 according to PGE’s own argument), or becomes planned for and results in stranded costs once
20 the customer moves to NLDA rates, creating another cost-shifting issue. Staff finds it to be a
21 much more straight-forward approach to allow the customer to enroll directly in the NLDA
22 program, as opposed to putting the entire NLDA program on hold pending additional
23 investigation of capacity-related charges. In that case, the risk to COS customers does not

24
25
26 ¹³⁶ PGE/300, Sims – Tinker/30.

¹³⁷ PGE/300, Sims – Tinker/30.

1 change and it helps to ensure a sense of urgency remains in resolving capacity and resource
2 adequacy issues as soon as possible.

3 **IV. CONCLUSION**


4 As set forth in its testimony in this proceeding, Staff urges the Commission adopt PGE's
5 proposed NLDA program, with the following exceptions, clarifications or future actions:

- 6 • Direct the parties to investigate resource adequacy and capacity-related charges in
7 a generic investigation, such as the currently pending UM 2024 investigation.
- 8 • Deny PGE's proposed RAD charge, without prejudice, pending further
9 investigation.
- 10 • Deny PGE's proposed RIC charge, without prejudice, pending further
11 investigation.
- 12 • Deny PGE's proposal to add the Long-Term Energy Offer to its standard offer
13 options available to NLDA customers, without prejudice.
- 14 • Direct PGE to apprise NLDA eligible customers of the Commission's policy to
15 consider waivers to program cap requirements on a case-by-case basis.
- 16 • Affirm the Commission's policy to limit NLDA customer eligibility to load that
17 has not been energized prior to taking NLDA service.

18
19 DATED this 14th day of November, 2019.

20 Respectfully submitted,

21 ELLEN F. ROSENBLUM
22 Attorney General

23 
24 Sommer Moser, OSB # 105260
25 Assistant Attorney General
26 Of Attorneys for Staff of the Public Utility
Commission of Oregon