

BEFORE THE PUBLIC UTILITY COMMISSION**OF OREGON**

UE 358

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,Advice No. 19-02 (ADV 919) New Load
Direct Access Program.

ORDER

DISPOSITION: NLDA PROGRAM APPROVED IN PART AND DENIED IN PART;
NEW TARIFFS ORDERED

In this order, we address multiple aspects of Portland General Electric Company's New Load Direct Access (NLDA) tariff, filed as Advice No. 19-02. We deny PGE's request to impose a resource adequacy charge (RAD) and invite PGE to propose changes to its curtailment schedules applicable to NLDA customers as we consider reliability and resource adequacy (RA) contributions from all direct access customers in the docket UM 2024 investigation. We deny PGE's resource intermittency charge (RIC), and encourage PGE to address any inadequacy that this proposed charge is intended to address at FERC. We deny without prejudice PGE's long-term standard service offer proposal; PGE may re-file and address special contracts concerns. Finally, we resolve a series of other NLDA program implementation questions.

I. INTRODUCTION AND PROCEDURAL HISTORY

In Order No. 18-341, the Commission adopted rules governing NLDA programs.¹ On February 5, 2019, PGE filed tariff sheets in Advice No. 19-02 to be effective for service on and after April 1, 2019, to establish PGE's NLDA program. On March 22, 2019, we suspended Advice No. 19-02 for a period of nine months in order to investigate the propriety and reasonableness of the tariff sheets. Additionally, we directed PGE to develop a nonbinding queue for customers interested in the NLDA program during the investigation. On May 24, 2019, we modified the suspension period to 12 months from April 1, 2019, based on PGE's agreement to a 90-day extension of the suspension period

¹ *In the Matter of Rulemaking Related to New Large Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 (Sep 14, 2018).

to accommodate the procedural schedule agreed upon by the parties. Staff of the Oregon Public Utility Commission, the Oregon Citizens' Utility Board (CUB), the Alliance of Western Energy Consumers (AWEC), Calpine Energy Solutions, LLC (Calpine), and the Northwest and Intermountain Power Producers Coalition (NIPPC) participated as parties in this proceeding.

On June 14, 2019, PGE filed direct testimony. Staff, AWEC, CUB, and Calpine each filed reply testimony on July 18, 2019.² PGE submitted reply testimony on August 5, 2019. On August 21, 2019, Staff, AWEC, and Calpine filed cross-answering and rebuttal testimony. PGE filed surrebuttal testimony on September 6, 2019. PGE and CUB responded to bench requests on October 4, 2019. Calpine and AWEC filed replies on October 11, 2019. The Commission conducted an evidentiary hearing on October 17, 2019. The administrative law judge issued a ruling closing the record on November 5, 2019. PGE, Staff, CUB, AWEC, Calpine, and NIPPC submitted opening briefs on November 14, 2019. PGE, Staff, AWEC, and Calpine filed closing briefs on November 26, 2019.

II. PGE'S NLDA PROGRAM PROPOSAL

PGE states that its NLDA program incorporates the Commission's requirements in Order No. 18-341. Specifically, the NLDA program is available to new load customers of 10 average megawatts (MWa) or higher, and requires the customer reach 10 MWa in a 12-month period within the first three years of service. Participation in PGE's NLDA program is capped at 119 MWa. Additionally, customers must procure transmission service under PGE's OATT and must pay a five-year transition adjustment representing 20 percent of PGE's fixed generation costs.

PGE states that a lack of long-term, firm, physical capacity to serve NLDA loads will impact reliability and RA within its balancing area authority (BA) and result in shifting risks and costs related to system reliability to cost-of-service customers. PGE proposes to include in its NLDA program the RAD and the RIC to cover the cost of securing capacity to cover NLDA load. Additionally, PGE requests that the Commission revise the integrated resource plan (IRP) guidelines to permit the company to include NLDA loads in its long-term RA assessment and planning within its IRP.

PGE states that the RAD is a charge for costs associated with planning for and securing the capacity needed to ensure RA and carry out PGE's responsibilities as a reliability provider. In particular, PGE states the RAD charge will allow for forward procurement of capacity resources and allow sufficient time to secure additional resources to avoid adverse impacts to system reliability. PGE proposes an initial RAD charge of \$0 and

² Staff submitted an errata to their reply testimony, Staff/100, Gibbens/16 at line 3, on July 31, 2019.

explains that, after planning and procuring capacity through its IRP and associated procurement processes, it will determine NLDA customers' share of capacity costs through the standard ratemaking process with RAD charges to be updated through pricing tariff updates, or similar filings.

PGE explains that the RIC is a charge for the additional flexible capacity PGE must provide to supply customer loads when an energy service supplier (ESS) under-schedules energy, resulting in a scheduling imbalance. The RIC is a \$/kilowatt-month charge, applied to customers of an ESS in any month when the supplying ESS's scheduled energy is lower than associated load.

Additionally, PGE's proposed NLDA tariff includes two PGE-supplied energy supply options. Under the first, PGE would supply energy priced on the Mid-Columbia daily index with a margin, separate wheeling and ancillary charges, and additional costs to meet renewable portfolio standard (RPS) requirements after the transition period (daily market option). PGE also proposes to establish a long-term market option, with prices based on a negotiated contract between PGE and the supplier. Under this option, PGE would enter into a resource contract to supply the NLDA customer and pass the costs of that contract, plus a margin and other related costs (such as wheeling), directly to the customer.

Finally, in its filing, PGE addresses the application of the program cap and eligibility criteria, as well as administration of the current customer queue.

III. RESOURCE ADEQUACY CHARGE

A. Introduction

PGE intends that its RAD will work to address a number of reliability and capacity related issues that NLDA customers and their energy supply from ESSs may create for cost-of-service customers. As proposed, the RAD would be a charge on NLDA customers to cover the cost of PGE acquiring capacity resources to serve these customers.

As explained by PGE, the RAD would achieve the following:

“Under circumstances when an ESS [Energy Service Supplier] fails to provide adequate service to its Customers in PGE's balancing authority area, the Company acts as Provider to ensure reliable electric service for affected new load direct access Customers. The RAD *** [ensures] that PGE can secure capacity to adequately serve all load...”³

³ PGE Advice No. 19-02 at 6.

If PGE received Commission approval of the RAD, PGE would plan to meet the capacity needs of NLDA customers and procure additional resources for that purpose. PGE states that it would “immediately act as necessary to procure capacity to support this new load.”⁴ To implement the RAD, PGE would set the charge initially at \$0.00 and, following PGE’s capacity planning and procurement on behalf of NLDA customers, would determine the appropriate charge through a general rate case. The RAD would be applied per kW of the customer’s on-peak demand. Currently, PGE estimates the charge as \$9.00 per kW of on-peak demand.⁵ PGE states that after securing incremental capacity resources, PGE would determine NLDA customers’ proportional share of costs through “standard ratemaking practices.”⁶

PGE proposes to apply the charge for all years of NLDA service. PGE states that the charge will apply even when a customer is also paying for during emergency default service, if such emergency service is needed by the customer. For the first 60-month period in which a NLDA customer pays 20 percent of PGE’s transition adjustment charge, a NLDA customer’s RAD charge would be reduced by the amount of the transition adjustment it paid.

B. Positions of the Parties

PGE and CUB request approval of the RAD. Overall, PGE contends that the RAD is necessary because of regional and BA RA needs. PGE argues that because a NLDA customer’s ESS may not perform to cover NLDA customer load needs at all times and in all circumstances, the RAD is necessary to ensure that at peak times NLDA customer load is backed by PGE capacity. PGE’s broad assertion is that PGE provides a necessary backstop to the ESS-provided supply, and that this service is not adequately recovered in ESS or NLDA charges without the RAD.

If the RAD is approved, PGE will seek to plan for the capacity necessary to back NLDA customers during 100 percent of peak hours. PGE considers the short-term market purchases that it asserts ESSs use for supplying NLDA customers to be an inappropriate resource for RA, and thus determines that ESS providers do not contribute to BA or regional RA. Effectively, PGE assigns zero capacity value to ESS supply. Accordingly, PGE considers it necessary to modify IRP guideline 9, which prohibits PGE from planning for direct access load.

⁴ PGE Reply Brief at 2 (Nov 26, 2019).

⁵ PGE Advice No. 19-02 at 7.

⁶ PGE 100, Sims-Tinker/17.

CUB supports PGE's proposed charges, arguing that providing overall RA is a critical utility function. CUB is concerned that without the RAD, cost-of-service customers will inappropriately bear reliability and RA costs that should be borne by NLDA customers. CUB also points to conditions in the wholesale market that allow direct access customers to benefit from low energy prices without contributing sufficiently to the fixed costs of new resources, which are primarily supported by cost-of-service customers; CUB asserts that requiring NLDA customers to contribute to the fixed costs of resources through the RAD will address this inequity.

All other parties and Staff oppose the RAD, presenting a variety of arguments against the proposed charge, detailed below. Staff and others recognize that RA is an important objective, and that the Commission should review contribution of direct access customers to RA, but opposing parties suggest that this should occur in a separate generic investigation, such as the pending direct access investigation docketed as UM 2024. In the meantime, Staff and others advocate for the NLDA program to move forward without the charges.

PGE argues that delaying imposition of the charges and changes to PGE's planning and procurement paradigm during a generic Commission investigation, as proposed by Staff and others, could result in reliability issues. Accordingly, should the Commission desire to consider these issues in a subsequent investigation, PGE proposes that its NLDA program be suspended pending that investigation.

1. Discrimination

Parties contend that the RA-related charges are discriminatory. Specifically, AWEC argues that if the RAD charge is applied to NLDA customers, the conditions and justification will be indistinguishable from Long Term Direct Access (LTDA) customers. Accordingly, those customers' due process rights could be violated, if a charge that could later be applied to them were effectively approved and justified in this docket without their participation. Additionally, parties argue that NLDA customers would be subject to a discriminatory rate if they were subject to the RAD charge, while LTDA customers imposing the same asserted costs and risks were not.

PGE argues there is no discrimination because NLDA and LTDA customers are differently situated, with key distinctions having been enumerated and explained in the NLDA rules.

2. *Legal Authority*

PGE asserts that the Commission has the general authority to impose RA-related charges on customers, but questions whether the Commission has the authority to impose such requirements on ESSs, citing ORS 757.649.⁷ Therefore, PGE questions whether investigating potential RA requirements for ESSs is a viable alternative to the proposed RAD charge.

AWEC asserts that the Commission has the legal authority to impose RA charges on ESSs. AWEC states that “[n]othing in the direct access law prohibits the Commission from modifying its existing ESS certification rules *** to require that ESSs adhere to a resource adequacy standard, and provide sufficient information for the Commission to ensure adherence to such a standard, as a condition of certification.”⁸

Parties and Staff also argue that Oregon’s direct access law must allow for customers to procure capacity, as well as energy, from third party suppliers. Staff contends that ORS 757.601 requires that all non-residential consumers shall be allowed direct access, including the right to purchase capacity services from a provider other than the incumbent, but that the capacity charges proposed by PGE would require NLDA to obtain capacity-related services from PGE.

3. *Factual Support for the Charge*

Parties assert that, even if the RAD is found to be legally permissible, the factual record in this case does not justify the charge. Calpine argues that there is no evidence regarding a current cost shift, as currently PGE does not plan for or procure resources to serve NLDA or LTDA customers. The parties also argue that PGE has not demonstrated that ESSs provide no capacity regionally, or to the BA, which they argue PGE must demonstrate before PGE can justify acquiring capacity to serve 100 percent of NLDA peak customer load.

AWEC argues that the short-term market can be relied upon for capacity, that this reliance is common among regional utilities, and that PGE may even rely on this market itself for capacity. AWEC also argues that PGE merely speculates that NLDA customers will only rely on the short term market for capacity through the ESS; AWEC contends that no evidence to that effect has been presented in this case.

⁷ PGE Opening Brief at 20 (Nov 14, 2016).

⁸ AWEC Response Brief at 14 (Nov 26, 2019).

Calpine observes that the only problem scenario PGE has put forward to explain the charge is not addressed by the RAD. Specifically, Calpine states that the only scenario justifying the RAD is one of a regional supply disruption in which an ESS cannot perform and a NLDA customer seeks emergency default service from PGE, but there is no energy available in the market at any price for PGE to provide default service. Calpine argues that the RAD would not mitigate the risk of such a large-scale regional disruption, because PGE admits that it would not necessarily add incremental additional capacity to serve NLDA customers and may contract with an existing resource already operating in the region.

4. *Relevance of the Transition Adjustment*

Parties and Staff point out that the NLDA rules included a number of provisions that were intended to protect, or practically function to protect, the system from any RA issues that could potentially be caused by NLDA customers. Accordingly, even if NLDA customers presented RA risks, these risks are appropriately addressed in NLDA rules and current NLDA charges. These protections include the program cap, the 20 percent transition charge, and the charges associated with sudden customer return to the system.

5. *Alternatives to the RAD*

Calpine and Staff argue that, if the Commission is inclined to consider approval of the charges, the Commission should require PGE to find ways to allow NLDA customers to avoid the charges. Specifically, Calpine proposes a customized demand response option designed to allow a customer to agree to reduce load in circumstances when its ESS fails to deliver energy. Calpine also contends that simple curtailment of NLDA customers when ESSs fail to perform would address the problem and should avoid all charges.⁹ PGE argues that, although it is open to adjustments that would allow NLDA customers to participate in its standard demand response program, Calpine's proposals for customized demand response and curtailment are unworkable; under its current tariffs, PGE asserts that it cannot curtail NLDA customers differently from other customers.

C. Resolution

PGE is accountable for system reliability within its BA, and resource adequacy is an important component of reliability. We must provide PGE with the appropriate

⁹ AWEC opposes this proposal, on the grounds that the RAD violates the direct access law, even if the financial impact of the charge on customers can be mitigated. For this same reason, AWEC urges the Commission to make a definitive ruling on the legality question in this case, to avoid a re-hashing of the arguments in a future proceeding, and to narrow the issues that may be addressed during the UM 2024 investigation. *See* AWEC Response Brief at 17.

framework and tools to achieve RA, and that means ensuring that all customers—including direct access customers—are appropriately contributing. We conclude at this time, however, that PGE has not justified that the RAD is an appropriate framework for direct access customers' contribution to RA.

PGE's proposal is deficient in part because it does not attempt to define RA and how it can be measured, and accordingly provides no basis for us to explore the feasibility of allowing direct access customers to choose how to support RA on their own. Given the spirit of Oregon's direct access law, we consider it important to explore whether we can adopt a framework that sufficiently supports reliability while giving customers the opportunity to deploy resources or tools of their own choosing. Though we do not determine here that customer choice is a legal requirement in this area, because we believe that our ultimate and overriding obligation is to develop a framework that we are confident ensures reliability, we do express a clear preference that PGE and parties work to facilitate that choice.

Given these priorities, we consider the UM 2024 investigation the most appropriate place to explore the key questions presented by PGE's proposal. In the interim, we find that, with an additional tool that we encourage PGE to pursue in this order, there are sufficient protections in place in the near term to allow the NLDA program to commence without the RAD. Specifically, we encourage PGE to file revised curtailment protocols for our consideration which would describe when and how NLDA customers would be curtailed in specific scenarios, so that cost-of-service customers are less likely to face cost shifts when ESSs supplying NLDA customers fail to perform.

Finally, we put all NLDA and LTDA customers on notice in this order that it is our intention to ensure that all system participants contribute tangibly to BA RA, and that one way or another, NLDA and LTDA customers will be required to support RA – just as all cost-of-service customers are required to support RA. We expect that any RA costs imposed on NLDA and LTDA customers would be commensurate with RA costs imposed on cost-of-service customers. Accordingly, though PGE's NLDA program will commence without the RAD charge, should a similar charge be justified in the future it may be imposed on all customers enrolled in the program or, in the alternative, actions or charges may be imposed on NLDA customers or their supplier ESSs following the completion of the UM 2024 investigation.

Because we do not approve the charges, and do not at this time direct PGE to begin planning to meet NLDA customer load, we conclude that IRP Guideline 9 should remain unchanged for now.

1. All System Participants Must Support RA, But We Favor Independent Options

Recent regional studies have highlighted that capacity additions and RA must be a focus of regional, state and utility efforts over the next several years. In one form or another, all parties and Staff have supported the principle that all system participants, including direct access customers and ESS providers, bear an obligation to support RA. We agree.

We have a strong preference for solutions that give direct access customers the opportunity to choose how they support RA, whether that be through the utility, third parties, demand response, customer-sited resources, curtailment, or a combination. At the same time, we recognize that it is ultimately PGE's responsibility to ensure that RA and a number of other system elements are in place to achieve reliability within the BA and to contribute to the reliability of the regional grid. Accordingly, if a solution that puts RA choices in the hands of customers cannot be developed, approved and implemented in a reasonable period of time, we remain open to imposing fees on direct access participants to support a well-justified, centrally procured RA service. We decline to reach the question whether the direct access law forecloses this type of an exclusively utility-procured solution until we determine whether alternatives exist to support both reliability and the customer choice goals of the direct access law.

We expect development of an RA solution or requirement for direct access to be a top priority in the UM 2024 investigation. The investigation in UM 2024 likely will examine whether or not a RA requirement should be placed on ESSs, rather than direct access customers. To facilitate discussion in UM 2024, we make a preliminary determination here that Oregon's direct access law permits us to require ESSs to comply with a RA standard. ORS 757.649 provides us with the sole authority to allow an ESS to operate in Oregon, and allows us to certify and de-certify ESSs. The legislature has afforded us wide authority to "establish standards for certification of persons or other entities as electricity service suppliers..."¹⁰ Our rules may address "[t]he ability of the person or entity to meet the person's or entity's obligation to provide electricity services pursuant to direct access..."¹¹ Under this authority, we believe we could adopt rules defining what an ESS must do to demonstrate that it is able to comply with capacity requirements for electricity services that we set as part of a RA standard. This flexibility, in conjunction with the legislative prohibition on the "unwarranted shifting of costs to other retail electricity customers," provides us with the authority to ensure that ESSs support RA directly.¹²

¹⁰ ORS 757.649(1)

¹¹ ORS 757.649(1)(A)

¹² ORS 757.607(1)

We recognize that not all parties addressed this legal issue, and that this conclusion impacts stakeholders that have not participated in this docket. Accordingly, we expect that if parties, Staff or other stakeholders wish to make additional argument on this legal question in UM 2024 or other dockets, we will consider those arguments.

2. *The Record Does Not Support the RAD*

In addition to our policy preference for an RA solution that supports customer choice, we decline to approve PGE's RAD proposal because it is not supported on the record.

Many of PGE's arguments in favor of the RAD are based on a general concept of reliability and assertions that PGE is uniquely positioned as a reliability provider. PGE's proposal does not define reliability and RA needs in a granular, objective way. In order to approve an RA requirement for direct access customers that is just and reasonable, regardless of whether it is supplied by PGE or ESSs, we must have a detailed, objective understanding of how PGE defines RA needs and how requirements are tailored to meet those needs.¹³

We agree that RA is an important priority; this, however, does not obviate the need to clearly describe RA needs, and explore the full suite of technical options for addressing them. PGE should endeavor to clearly articulate how it achieves RA within its BA, and should work to explore how RA needs could be met according to an objective standard against which we could measure either the appropriateness of PGE-imposed charges or the performance of customer or third party resource supply. PGE should seek to demonstrate through clear scenarios, and examples of how those scenarios play out over time, how direct access customers and their providers create impacts for cost-of-service customers. This is particularly important given current regional market dynamics, and their changing nature. Market depth today and in coming years is quite different—and changing for different reasons—at different time intervals. This impacts both the diagnosis of risks and debate about solutions. Explicit discussion of risks hour ahead, day ahead, seasonally, and during times of system stress would be ideal.

We note the importance of addressing these issues with specific data, clearly described scenarios, and real experience. The only explicit scenario PGE has presented to justify the RAD is a very narrow one—an instance where an ESS fails to perform, and no power is available, at any price, in the market for PGE to supply customers with emergency service. As several parties correctly observe, this could only occur where there are

¹³ Moreover, we are unclear whether PGE's proposal seeks to capture something beyond the customary industry concept of RA (*i.e.*, one- to four-year forward procurement of resources with high likelihood of availability or firmness). If PGE's concept of acting as a "reliability provider" involves a more comprehensive, longer-term planning and procurement effort, PGE must more clearly describe and explicitly define this concept.

dramatic regional shortages of power; accordingly, the solution to this specific regional problem must be new, incremental capacity in the region. PGE, however, has proposed utilizing RAD charges to procure contracts with existing capacity resources. Such action does not serve to address the explicit problem scenario that PGE has outlined to justify the charge.

In addition to deficiencies in defining its objective, PGE's proposal is not justified on the record because PGE has not demonstrated that ESSs provide zero RA support at peak times. PGE's proposal would have the company acquire 100 percent of NLDA peak load capacity. Parties have put forward credible evidence that the contracts backing ESS supply may in some way support regional RA. We do not definitively find that ESS providers already support RA, but the record fails to support a finding that ESS providers do not support RA *at all*. We consider the extent of ESSs' existing contribution to RA to be an important area of investigation and analysis in UM 2024.

3. *The NLDA Program May Begin Without the RAD, but Customers Should Expect Future RA-related Charges or Requirements if Supported*

We will allow PGE's NLDA program to commence without the RAD, but we strongly and clearly emphasize that all customers should expect to tangibly support RA in the coming years. We intend, when considering any future proposed charges or requirements, to disfavor "grandfathering." We expect any charges or requirements will apply to all NLDA and LTDA customers, or the ESSs who serve them, in a manner equitable to the charges and obligations placed on cost-of-service customers for the same purposes.

Having clearly set that expectation, we conclude that the NLDA program may commence without the RAD. In the short term, there are enough protections and factors in place to provide us with confidence, when taken with our request for PGE to propose a modified curtailment protocol, that the NLDA program will not create near-term impacts due to RA issues. The NLDA rules require customers to pay a 20 percent transition charge for 60 months; that charge was intended to compensate cost-of-service customers for unidentified and unintended costs associated with the NLDA program, and we believe this is one such cost. The NLDA program cap also provides a natural limit to the potential impact of NLDA customers on cost-of-service customers on RA grounds, and we would expect to consider an NLDA customer's contribution to RA in evaluating any waiver request.

Finally, we observe that despite urgent language in filings and testimony, PGE's proposal was not to immediately procure capacity, but rather to set the RAD at zero, procure

capacity resources on the timeline set out in its IRP (which currently calls for bilateral procurement from existing resources and then an RFP for new capacity resources in 2023), and then set charges through a general rate case. We expect parties to UM 2024 to present a proposal or set of proposals consistent with the expectations set forth in this order during 2020, so that the timeline PGE proposed for procuring capacity to serve NLDA customers is not significantly delayed.

In addition, we encourage PGE to consider revising its curtailment protocol for NLDA customers to ensure that, if ESSs serving NLDA customers fail to perform in instances outlined by PGE, their customers can be curtailed and do not cause cost shifts to cost-of-service customers while we consider a more comprehensive RA standard. We do not conclude, based on this record, that a curtailment mechanism can fully address PGE's legitimate concerns about the reliability contribution of NLDA customers, particularly given that PGE may not have visibility to ESS performance in the time frame in which curtailment would support system reliability. However, there may be steps PGE can take to use a modified curtailment protocol to mitigate reliability concerns with NLDA customer growth while developing a more comprehensive RA program.

IV. RESOURCE INTERMITTENCY CHARGE

A. Introduction

PGE proposes its RIC to address potential impacts to cost-of-service customers as a result of ESS scheduling practices. As explained by PGE: "The purpose of the RIC is to pay for PGE's providing intra-hour capacity to meet the mismatch between scheduling and actual customer loads." PGE distinguishes the energy used to balance, which it acknowledges ESSs currently pay for through its OATT and the capacity necessary to supply that energy, which PGE states it is not currently compensated for.

The RIC would be charged whenever PGE supplies "capacity" (*i.e.* provides energy) to support the schedule of an ESS any time during a billing period. Initially, the charge would be set at \$0.58 per kW of on-peak demand.

B. Positions of the Parties

Parties and Staff argue that the services for which PGE seeks to charge NLDA customers through the RIC are already covered by PGE's OATT. The RIC, parties argue, should not be approved because PGE should work to alter its OATT to change its balancing charges to ESSs to address any real or perceived shortfall. AWEC argues that the RIC would duplicate ancillary service charges already collected from direct access customers through their ESSs, including operating reserves. Calpine notes that FERC has

previously approved a tariff provision in PGE's OATT designed to promote accurate scheduling by ESSs. Calpine additionally disputes PGE's assertions that imbalance capacity costs are distinct and fall outside FERC's jurisdiction, and contends that FERC has developed criteria that it would consider regarding charges to recover capacity costs associated with providing imbalance services. Calpine proposes that PGE return to the banded imbalance charges in the OATT to address any costs of scheduling issues.

PGE responds that the RIC is not duplicative of services under PGE's OATT, because PGE's OATT charges recover energy costs, not the cost to hold capacity to provide that energy. PGE contends that Rule K of PGE's Commission-approved retail tariff governs ESS scheduling requirements and that the Commission has the authority to oversee ESS scheduling practices, thereby giving us jurisdiction and legal authority to impose the RIC. PGE acknowledges that the ESS schedules contain transmission reservations, but asserts this does not make all direct access supplier activities FERC-jurisdictional.

C. Resolution

We deny the request to impose the RIC, but similar to our decision on the RAD, we do not foreclose the possibility that a charge similar to the RIC may be imposed in the future. At this time, PGE has failed to demonstrate why this charge should be a matter of state oversight, rather than a charge PGE can address through FERC. Accordingly, we direct that PGE should first address any inadequacy in its OATT at FERC. If, as PGE argues, its current OATT charges do not adequately recover the cost to supply that service, including capacity-related costs, PGE should attempt to address that shortfall through its OATT. If OATT charges can be structured to compensate PGE for capacity-related costs associated with balancing services, but are not currently structured to do so, then PGE arguably has an obligation to cost-of-service customers to take action at FERC to address such cost-shifting. We encourage PGE to pursue at FERC an approach that addresses this issue in its OATT, as Calpine notes PGE has done in the past.

If FERC determines that PGE cannot include capacity costs related to balancing services in its OATT, and the state has jurisdiction to impose requirements through its direct access program decisions, then we remain open to PGE proposing a charge similar to the RIC again. However, if and when it does so, PGE should better address the relationship between the RIC and any capacity procured to support RA for direct access customers. We are not persuaded, on this record, that the flexible capacity needed to support imbalance service would be entirely unavailable to support RA. We suspect, as parties and Staff have argued, that there is significant potential for duplication across these charges that PGE has not adequately addressed on this record.

V. STANDARD OFFER

A. Introduction

PGE proposes two PGE-supplied energy supply options in its NLDA tariff. First, under the daily market option, PGE would supply energy priced on the Mid-Columbia daily index with a margin, and wheeling and ancillary charges, with a tariff provision stating that additional charges to meet RPS requirements may apply after the five-year transition period. Second, under the long-term market option, PGE would enter into an RPS-compliant resource contract to supply the customer, with the costs of that contract, plus a margin and other related costs (such as wheeling), passed through to the NLDA customer. PGE explains that under either option, the amount of RPS-related procurement would be only that needed to comply with the applicable RPS requirement at that time.¹⁴ PGE proposes to include NLDA customers taking standard offer service in the NLDA program cap.

B. Positions of the Parties

PGE argues that both of its proposed standard offer service options are consistent with the requirements of OAR 860-038-0250. PGE contends that providing customers with a long-term power purchase agreement option for procuring bundled renewable energy is intended to ensure RPS compliance because there is no index or structured market for RPS products. PGE maintains that LTDA customers who elect standard offer service contribute to RPS-compliant resources through the transition adjustment, but that the 20 percent transition adjustment for NLDA customers would not fully contribute to RPS compliance.

Accordingly, PGE argues that NLDA must have a standard offer service option that is RPS-compliant from the start. PGE asserts that deferring a decision until a future rate case will mean that PGE must choose between RPS compliance or shifting RPS-compliance costs onto cost-of-service customers.

Calpine contends that the same rules regarding the standard offer option that apply to the LTDA program apply to the NLDA program. Calpine argues that PGE's standard offer should be limited to a daily market index price and PGE's long-term market energy option should be rejected. Calpine argues that the long-term market energy option is a specialized product offering to an individual customer and thus is no different than a special contract. Calpine contends that the Commission's rules have barred new special contracts since the implementation of direct access.

¹⁴ PGE/200, Sims-Tinker/43.

Calpine maintains that it would be reasonable to include bilaterally procured energy for the RPS portion (15 percent of customer supply at present) in the daily market energy option in order to offer NLDA customers an RPS-compliant options. Calpine argues that in doing so, the Commission should establish conditions to ensure that the standard offer does not become a special contract or another PGE green tariff offering. Additionally, Calpine asserts that program participants taking the standard offer should not count towards the cap and contends that would limit availability in the NLDA program for customers seeking direct access products. Calpine additionally argues that if the purpose of the cap is to limit the potential impact of customers returning to PGE-supplied service, this is not an issue for NLDA customers served with PGE-supplied energy.

Staff agrees with Calpine that PGE's long-term option might constitute an impermissible special contract. Staff proposes rejecting without prejudice both standard offer options proposed by PGE. NIPPC contends that under direct access regulations, PGE may offer standard offers that are available to any non-residential entity but may not offer individually negotiated agreements.

PGE disputes Calpine's contention that the long-term energy option constitutes a special contract. PGE argues that this option does not involve PGE negotiating rates or creating a specialized product.

Additionally, PGE proposes to include NLDA customer standard offer service towards the cap. PGE asserts that this is consistent with standard offer service in its LTDA program counting towards the LTDA cap, and the rationale that both standard offer service and direct access are non-cost-of-service options.

C. Resolution

1. Standard Offer Options

Under OAR 860-038-0250(1), PGE must provide one or more standard offer rate options to large nonresidential retail electricity consumers. PGE has identified, and we recognize, a need to address the issue of RPS compliance for NLDA customers who take a standard offer rate option from PGE.

For NLDA customers, there are two dimensions to the issue of RPS compliance under standard offer rate options. The first dimension, which affects both NLDA and LTDA customers the same, is how PGE can offer a RPS-compliant standard rate option after customers cease paying transition adjustments at the end of five years. The second issue, unique to NLDA customers, is how to provide a RPS-compliant standard rate option for NLDA customers during the five-year period in which they pay only 20 percent of the standard transition adjustment.

PGE seeks to address both the near-term and long-term dimensions of the issue by offering NLDA customers a long-term market option under which PGE would enter into an RPS-compliant resource contract to supply the NLDA customer, with the costs of that contract, plus a margin and other related costs, passed through to the NLDA customer. PGE's proposal for the daily market standard offer option for NLDA customers, by contrast, does not address RPS compliance costs during the transition period, and (2) inadequately addresses charges for those costs after the transition period. For the daily market standard offer option, PGE's proposal for NLDA customers largely mirrors that available under its LTDA program.¹⁵ PGE's proposed NLDA tariff differs only by indicating that "additional charges to meet the state of Oregon's Renewable Portfolio Standard may apply" after completion of the transition period, but PGE does not address how such additional charges would be determined.

Although we recognize a need to address the issue of RPS compliance in standard offer options, we do not accept PGE's solution. We share parties' view that PGE's long-term market option proposal may implicate Commission policy on special contracts, and share Staff's concern that this option might not meaningfully differ from PGE's proposed green tariff product. Although PGE argues that its long-term market option does not involve PGE negotiating rates or creating a specialized product, PGE's proposed tariff provides that

"[p]rices for this option will be specified in a negotiated contract between the Customer(s) and the Company. The cost of the energy, capacity, and other attributes specified in the contract will be contingent upon Customer desired supply characteristics and will capture the State of Oregon's renewable portfolio standard requirements."¹⁶

The elements of contract negotiation and customer direction on supply characteristics appear on this record to be too close to a special contract or green tariff option for our approval. Accordingly, we decline to approve this provision.

PGE may be able to develop a long-term market option that standardizes an approach to RPS compliance and better addresses special contracts concerns raised by parties here. If PGE does so, we encourage PGE to propose it in a rate case or other appropriate proceeding. A standardized approach could be available to NLDA customers during the transition period, as well as providing a solution for all direct access customers taking standard offer service after the transition period. Because the issue of RPS compliance costs is equally applicable to standard rate options for all customers on direct access, this issue is more appropriately addressed in a generic investigation or rate case.

¹⁵ Advice No. 18-05, No. E-18, Sheet No. 490, effective May 14, 2018.

¹⁶ Advice No. 19-02, PUC Oregon No. E-18, Original Sheet No. 689-5.

In the meantime, if RPS compliance for NLDA customers on standard offer service is expected to become a significant cost-shifting concern, we encourage PGE to provide a RPS-compliant daily market standard offer option. We are inclined to allow bilateral procurement for the RPS portion of the supply, with timing and transparency conditions in the nature of those Calpine proposed. However, because PGE and other parties did not meaningfully engage with Calpine's proposal on this record, we do not direct PGE to accept it in this order.

For now, we approve PGE's daily market standard offer option as filed, reject PGE's proposed long-term market option, and will plan to investigate the appropriate recovery of RPS compliance costs for PGE's standard offer in another proceeding that covers both programs. In the meantime, PGE may return with an interim proposal for an RPS-compliant daily market standard offer after commencement of PGE's NLDA program.

2. *Application of the Cap*

Parties disagree about whether NLDA customer standard offer service should be counted towards the NLDA program cap.¹⁷ We see no reason to depart from our existing practice in the LTDA program, given that standard offer service and direct access are both non-cost-of-service options. We conclude that NLDA customers taking standard offer service should be included in the program cap, consistent with PGE's existing LTDA program.¹⁸ We have indicated some flexibility with respect to the cap. In adopting a six percent cap for the NLDA program, we noted that we would consider cap waivers based on a showing that an application poses no significant risk or costs to cost-of-service customers and presents significant benefits to the system. Additionally, we committed to a wholesale review of cap questions after four years, and expect the issue of program caps will be raised in UM 2024.

VI. ADDITIONAL ISSUES

A. Cap Waiver Notification

1. *Positions of the Parties*

Staff argues that the Commission should require PGE to inform customers in the NLDA queue who are ineligible due to lack of space under the cap about the option to seek waiver of the cap. Staff asserts that PGE should be required to inform customers of program requirements and related Commission policies. Staff contends that if a customer is next in the queue and there is insufficient room under the cap for its load, PGE should

¹⁷ We note that PacifiCorp's NLDA tariff does not specifically address whether participation in standard offer service counts towards the cap. Schedule 293, Advice No. 19-007, effective August 14, 2019 ("A total of 89 aMW will be accepted under this program unless the Commission determines otherwise.")

¹⁸ Advice No. 18-05, No. E-18, Sheet No. 490, effective May 14, 2018.

allow the customer sufficient time to file for a waiver prior to removing them from the queue.¹⁹

PGE disputes that PGE should be required to inform potential NLDA customers in the queue about the option to seek a waiver if that customer is ineligible due to a lack of available space under the cap. PGE contends that it should not be required to interpret and communicate the waiver considerations to large and sophisticated customers.

2. Resolution

In establishing NLDA rules, we adopted a program cap of six percent of weather normalized annual load in calendar year 2017. In doing so, we noted that we would consider cap waivers for customers demonstrating good cause. Specifically, we recognized that a waiver of the cap for an individual application might be appropriate if it poses no significant risk or costs to cost-of-service customers and presents significant benefits to the system, such as by advancing the goals reflected in state policy through elements such as carbon-free generation resources, value-added grid services, and support for system capacity needs.

The option to request a waiver is addressed in detail in Order No. 18-341, adopting the rules related to NLDA programs. We observe that potential NLDA customers are sophisticated entities with advanced understanding of energy procurement and regulatory matters and we decline to establish a requirement that PGE must notify such customers of the option to request a waiver. PGE's tariff and communications to potential customers must be free of any mischaracterization or confusion as to whether or not a waiver to the cap is permissible, but we are disinclined to adopt a requirement whose enforcement would require a new level of Commission vigilance in monitoring PGE's communications with its largest customers. While we do not establish an affirmative obligation on PGE, we do expect the company to work constructively with potential NLDA customers who seek a waiver. We note that PGE agrees that it will hold a place in the queue for a customer determined to have forecasted load exceeding the amount available under the cap, while the customer seeks a waiver.²⁰

B. Cap Eligibility: Load Forecast

1. Introduction

PGE states that it plans to use customer-provided load information that establishes the basis for distribution facilities to measure space under the cap. Specifically, PGE states it will use the expected load based on the facility design, as memorialized in the NLDA

¹⁹ Staff/300, Gibbens/11.

²⁰ PGE/200, Sims-Tinker/58.

contract between the customer and the company, for the amount of load that applies toward the NLDA cap.²¹ PGE argues that this will prevent system gaming by ensuring customers use the same load forecasts for NLDA eligibility and distribution facility design.

2. *Positions of the Parties*

Staff agrees with the company's proposal to base the load forecast for eligibility on the distribution facility design in order to standardize the process and prevent gaming of the system. Recognizing the potential for circumstances to exist where distribution planning may not provide an accurate calculation for purposes of eligibility, Staff proposes requiring the company to include waiver process information in its communications with potentially affected customers and to allow parties to review cap calculations to ensure the most reasonable assumptions are used.²²

AWEC states that the customers eligible for the NLDA program often have dedicated substations, and that it is not immediately clear what the capacity should be assumed to be for purposes of the cap. Accordingly, AWEC recommends against adopting a bright line rule and proposes a more flexible approach, with evaluations to be addressed on a case by case basis between PGE and the customer, and if agreement is not reached, with the Commission.

Calpine argues that while it appears the parties agree that a financial commitment to construction should be used to measure a customer's level of participation in the program for purposes of the cap, but disputes the use of design plans. Calpine contends that a distribution contract, such as a minimum load agreement binding the customer to the costs of building or upgrading the facilities should instead be the basis because there can be changes to the design plans prior to execution of such a contract.

3. *Resolution*

The NLDA rules do not prescribe how customer load should be counted toward eligibility under the cap. We find reasonable PGE's approach of evaluating eligibility on the forecasted load based on the distribution facility plans, as memorialized in the binding NLDA contract. Due to the potential variety of circumstances of potential NLDA customers, we recognize a need for flexibility and thus decline to adopt a strict bright line approach. We agree with PGE that this as an area in which the company should exercise discretion, and work constructively with potential customers.²³ Where circumstances require a more flexible approach, we find that such evaluations must instead be addressed

²¹ PGE/100, Sims-Tinker/22; PGE/200, Sims-Tinker/52.

²² Staff/300, Gibbens/11.

²³ PGE/200, Sims-Tinker/52.

on a case-by-case basis between PGE and the customer. In the event agreement is not reached, the parties may seek resolution from the Commission.

C. Long Term Transmission Constraints

In testimony, AWEC observes that Schedule 689 provides that “[s]ervice under this schedule is limited to the first 119 aMW that applies to Schedule 689, or at an amount subject to the long-term transmission planning constraints of the Company.”

AWEC argues that this language suggests that PGE can refuse NLDA service to a customer, even if they are within the NLDA program cap, if PGE does not have sufficient transmission capacity. AWEC contends that such a limitation would violate PGE’s OATT, which requires it to provide Network Integration Transmission Service on a nondiscriminatory basis. AWEC argues that if PGE has insufficient transmission capacity to serve an NLDA customer, then it must plan for and construct the necessary capacity; a lack of transmission capacity might delay service to an NLDA customer, but cannot prevent such service.

AWEC proposes to revise that provision as follows: “Service under this schedule is limited to the first 119 aMW that applies to Schedule 689. The timing of service under this schedule may be impacted by transmission capacity and planning requirements, consistent with the requirements of the Company’s Open Access Transmission Tariff.”

We adopt AWEC’s proposal and direct PGE to file a tariff revision consistent with AWEC’s recommendation.

D. Review of Contract

1. Positions of the Parties

Calpine asserts that PGE should be directed to provide the opt-out contract for review at the time that it files its compliance filing tariffs. Calpine contends that individual customers are unlikely to have much ability to negotiate different terms into the agreement, and that adverse provisions could present a barrier to entry to the program. Calpine argues that PGE’s form opt-out contract for the NLDA customer is an extension of the tariff and thus should be subject to stakeholder review and Commission approval. PGE contends that it does not object to submitting its opt-out agreement after a Commission decision in this proceeding, but asserts that it should be an informational filing. PGE notes that it provided its LTDA customer contract as a starting template for its proposed NLDA customer contract.

2. Resolution

While PGE provided its LTDA customer contract as a starting template during the course of this proceeding, drafting certain of the NLDA customer contract terms depended on tariff determinations made in this order. In order to ensure that PGE's NLDA opt-out agreement is consistent with the NLDA rules and the directives in this order, we direct PGE to submit its opt-out agreement with its compliance tariffs. Staff reviews compliance filings to ensure consistency with the determinations made by the Commission in its order. To the extent that an issue is raised during the Staff review of PGE's compliance filing that requires Commission clarification, such issue can be brought to a Public Meeting.

VII. ORDER

IT IS ORDERED that:

1. Advice No. 19-02 filed on February 5, 2019, is permanently suspended.
2. Portland General Electric Company must file new tariffs consistent with this order, to be effective February 6, 2020.

Made, entered, and effective Jan 07 2020.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Mark R. Thompson
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.