

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 651

In the Matter of

Rulemaking Regarding Direct Access
Including 2021 HB 2021 Requirements.

ORDER

DISPOSITION: NEW RULES ADOPTED; EXISTING RULES AMENDED

In this order, we memorialize our decision made and effective at the June 27, 2023 Regular Public Meeting to adopt new and amend existing Division 38 rules addressing direct access and House Bill (HB) 2021 requirements. We adopt the proposed rules contained in the June 23, 2023, report by the Administrative Hearings Division (AHD). That report, including AHD's proposed revised rules, is attached as Appendix A. The new and amended rules as adopted are attached as Appendix B and will be effective upon filing with the Secretary of State, or as specified otherwise in the rules.

These rules are the culmination of significant work and coordination between Commission Staff, public utilities, and other participants. We appreciate the thoughtful discussions and comments of all participants to help ensure that we have rules in place to help guide the contested case docket UM 2024, for which we set forth some expectations below.

I. DISCUSSION

We adopt the rules as proposed by AHD, with additional discussion of our rationale and expectations for implementation of three rule sections. In addition, we discuss our expectations for the contested case docket, modifying slightly the discussion in AHD's report.

A. Cap on Non-Curtailable Load (OAR 860-038-0290(7))

This rule is not strictly necessary, as we have the authority and discretion to institute a cap or caps without establishing a rule expressing our intention to do so. Regardless, we adopt it, as proposed, to reflect that non-curtailable load carries provider of last resort risks exceeding those of curtailable load, and to provide a starting point for the contested case discussion. At the same time, we clarify that expressing an intention to adopt caps for non-curtailable load does not prevent us from also adopting caps for curtailable load, nor from revising our rule and declining to adopt caps on non-curtailable load. Depending

on the outcome of the contested case, this rule may warrant further consideration and revision.

B. Uncommitted Supply Rates for Curtailable Customers (OAR 860-038-0290 (11)) and Non-Curtailable Returning Customer Rates (OAR 860-038-0290 (14))

We adopt this rule section as proposed, but we note our concern about its use of the undefined term “market rate” and express our expectations for its interpretation and implementation. We understand the rule to require that cost-of-service (COS) customers receive the full benefit of utility market sales that could have been made were it not for sales to direct access customers. We observe that the scarcity-driven, volatile market conditions that may lead direct access customers to need utility supply are also opportunities for customers of utilities able to make surplus sales to benefit from high prices. A “market rate,” for purposes of this rule, should reflect as closely as possible the actual opportunity cost of serving a returning customer, with flexibility to account for pricing in a way that reflects a dynamic market.

C. Demonstration Criteria (OAR 860-038-0290(10)) and Eligibility Criteria (OAR 860-038-0290(15))

The proposed rules articulate various elements that must be included in each electric company’s tariff or program rules, including eligibility criteria for becoming a preferentially curtailable customer, a process for implementing preferential curtailment, and criteria that an electric company will use to demonstrate that it attempted to provide service to a preferentially curtailable customer. We adopt the proposed rules to allow final resolution of these issues in utility tariff proceedings, because we recognize that each utility’s approach may be slightly different, depending on the utility’s operating context, the loads in its service territory, or other factors. However, we clarify that while these elements will be stated in utility-specific tariffs and program rules, rather than our administrative rules, we expect a robust discussion about the general characteristics of such criteria and process elements in the contested case. We expect to set general parameters for these elements in our contested case decision, with further refinement, if needed, in individual utility tariff proceedings.

D. Contested Case Issues

AHD recommended that we give specific direction as to the process and issues to be examined in the contested case. Although we do not adopt AHD’s specific recommendation, we note our expectations that parties will engage in the contested case process in an efficient manner and work as cooperatively as possible to resolve contested items. We are open to proposals to phase the contested case to decide issues that may be less controversial sooner, in order to give more timely guidance to entities needing to make a decision whether to participate in direct access programs.

Regarding substantive issues, in addition to the items listed in the AHD report, we also point out some other, specific items that we expect will be discussed and resolved, either

under the umbrella of an item presented in AHD’s list, or separately where appropriate. We note a specific interest in the following topics: (1) the utility process for curtailing a customer; (2) how to set a “market rate;” (3) limitation of utility liability; (4) how critical facilities are defined and whether and how such a facility may be curtailed; (5) penalty charges for non-curtable customers who return to COS; and (6) the process for a direct access customer to return to COS upon the resolution of the contested case. Neither this list, nor the list in the AHD report, is meant to be exhaustive. The parties are free to present and determine additional issues for resolution as a part of the contested case, noting our expectation for an efficient process above.

II. ORDER

IT IS ORDERED that:

1. OAR 860-038-0005, 860-038-0170, 860-038-0290, 860-038-0300, 860-038-0405, 860-038-0590, and 860-038-0740 are adopted as set forth in Appendix B to this order.
2. The new and amended rules, with the exception of OAR 860-038-0290, will be effective upon filing with the Secretary of State.
3. OAR 860-038-0290 will be effective as of June 1, 2024.

Made, entered, and effective Aug 17 2023.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner

A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: June 27, 2023**

REGULAR ___ CONSENT ___ RULEMAKING X EFFECTIVE DATE N/A

DATE: June 23, 2023

TO: Public Utility Commission

FROM: Christopher J. Allwein

THROUGH: Nolan Moser and Diane Davis **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 651) In the Matter of Rulemaking Regarding Direct Access Including 2021 HB 2021 Requirements.

AHD RECOMMENDATION:

Adopt the proposed new and amended permanent direct access rules as filed with the Oregon Secretary of State in the February 27, 2023, Notice of Proposed Rulemaking and Attachment B to this report;

Adopt the proposed revisions to preferential curtailment rule OAR 860-038-0290, as presented in the memorandum and Attachment A to this report; and

Adopt the recommendations for contested case issues as recommended in this memorandum.

DISCUSSION:

Issue

In docket AR 651, Staff worked with docket participants to develop, revise, and clarify relevant direct access rules during the informal part of this rulemaking docket. These proposed rules were filed with the Oregon Secretary of State on February 27, 2023, in a Notice of Proposed Rulemaking (NOPR). The proposed and amended direct access rules are intended to be in place prior to the conclusion of a contested case that will address specific, associated elements of direct access programs in Oregon. During the formal process, Staff and participants worked together to further revise the preferential curtailment provisions in proposed rule OAR 860-038-0290. These revisions are presented in this memorandum for the Commission's consideration and adoption.

AR 651
June 23, 2023
Page 2

Applicable Rule or Law

Pursuant to ORS 756.060, the Commission “may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission and may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and telecommunications utilities and other parties before the commission.”

Oregon House Bill 2021 (HB 2021) Section 5 requires electricity service suppliers (ESS) filings to include greenhouse gas emissions, projected reductions and progress actions toward clean energy goals.

HB 2021, Section 25 introduces a new and required, aggregated supply mix disclosure summary, along with associated emissions of the power sources that serve the direct access retail electricity consumers of ESS and other similar aggregated information as determined by the Commission.¹

The Oregon Administrative Procedures Act provides procedural guidelines for adopting or amending administrative rules, including specific processes for contested case proceedings.

OAR 860-038-0001 applies the Division 038 rules to electric companies and ESS serving direct access customers in the state of Oregon.

Analysis

Background

On June 10, 2019, the Commission opened docket UM 2024, *In the Matter of Oregon Alliance of Western Energy Consumers Petition for Investigation into Long-Term Direct Access Programs*. The docket opened in response to the Alliance of Western Energy Consumers’ (AWEC) petition for a general investigation into long-term direct access programs, to modify and update direct access rules with regard to issues including the changing energy landscape, cost shifting, and competitiveness of a retail market, among others.

On October 1, 2021, the ALJ issued a memorandum in docket UM 2024, explaining the Commission’s determination that a phased sequence with a non-contested rulemaking—followed by a contested case process—would allow for more “effective definition,

¹ ORS 757.649(1)(f).

AR 651
June 23, 2023
Page 3

narrowing, and processing of the issues in this proceeding.” The memorandum narrowed the scope of issues in the first phase to direct access requirements stemming from HB 2021 and some elements of parties’ earlier straw proposals. As part of Phase I, Staff drafted proposed language changes to Division 38 and developed policy guidance on a small set of additional issues and commenced docket AR 651. From November 2021 to September 2022, Staff worked with participants to solicit input through a series of workshops and comments regarding Staff’s proposed policies and rule language. During this informal process, participants filed several rounds of comments. Staff continued to modify the language of the proposed rules based on participant input.

In Order No. 22-364, entered October 7, 2022, the Commission adopted Staff’s recommendation to move the rulemaking process to the formal phase. At the October 4, 2022 Regular Public Meeting, the Commission encouraged Staff and participants to work together and resolve specific, outstanding issues regarding preferential curtailment. During the formal process, Staff and participants continued to further refine the proposed preferential curtailment rule.

Formal Rulemaking

A rulemaking hearing was held on April 4, 2023, and final comments were due on April 25, 2023. At the rulemaking hearing, following a presentation by Staff, comments were received from Portland General Electric Company (PGE), PacifiCorp, AWEC, Oregon Citizens’ Utility Board (CUB), Northwest & Intermountain Power Producers Coalition (NIPPC), and Brookfield Renewable Trading and Marketing LP (Brookfield). All Commissioners attended and engaged with several of the speakers. On or before April 25, written comments were received from PGE, PacifiCorp, Staff, CUB, Brookfield, AWEC, and NIPPC. Written comments reiterated, and in some cases, expanded participants’ comments presented at the rulemaking hearing.

The proposed, final rule changes for preferential curtailment, as presented below for consideration, reflect the consideration and inclusion of some participants’ comments. AHD is appreciative of the sincere and sustained effort by Staff and participants to create and refine the new and amended rules over an extended period of time.

The discussion below provides relevant comment and recommendations for further revision to sections of proposed OAR 860-038-0290. Next, both procedural and substantive issues, as proposed by the parties for the contested case, are presented for Commissioners’ consideration.

AR 651
June 23, 2023
Page 4

Proposed Revisions to Preferential Curtailment Rule Provisions

Election Window Time Periods (OAR 860-038-0290(5) and OAR 860-038-0290(6))

In its comments, PacifiCorp recommended that section (5) of the rule be modified to allow customers to make their curtailment election 12 months after the utility tariffs are approved, rather than 12 months after the effective date of the rule. Staff agrees with this change, as it allows time for tariff filings to be reviewed by Staff and interested persons, for any contested issues to be resolved, and time for consideration and approval by the Commission.

Similarly, PacifiCorp stated that changing curtailment elections each year, as stated in section (6) is problematic from a planning perspective.²

AHD Recommendation:

AHD recommends adopting the following revisions to each rule section that provide a time allowance for electric companies to institute individual program tariffs and specify within those tariffs a reasonable amount of time for an election window:

(5) Consumers already participating in New Large Load or long-term opt-out direct access service must make the election defined in section (3) of this rule during the first annual election window that takes place at least 12 months after the ~~effective date of OAR 860-038-0290~~ an electric company has implemented tariffs and program rules necessary to implement this rule.

(6) A consumer may change their curtailment election during ~~the annual~~ an election window each year ~~after the length of time specified in an electric company's tariffs implementing these rules.~~

Cap on Non-Curtailable Load (OAR 860-038-0290(7))

This proposed rule section generated significant discussion in workshops, the rulemaking hearing and in written comments. The proposed rules states:

² PacifiCorp Closing Comments at 9 (Apr 25, 2023).

AR 651
June 23, 2023
Page 5

(7) The Commission will establish a cap on non-curtable direct access load to protect cost-of-service customers from the risks and costs associated with direct access consumers' return to an electric company's system.

Participants in this rulemaking generally agree that specifics surrounding a cap on non-curtable load will need to be determined in the subsequent contested case. In its March 31, 2023, comments, Staff stated that its original proposal was for a backstop capacity charge for non-curtable loads. This was not supported by the participants, so Staff adopted PacifiCorp's idea for a cap framework for non-curtable load and proposed the above rule.

Staff states that any cap "should be set at a level that limits any potential reliability and cost impacts in the event direct access customers return to default supply."³ Staff also states that the proposed rule "does not limit the Commission's discretion to set caps on other sections of direct access load, nor does it obligate the Commission to set any additional cap."⁴ Staff notes that, as proposed, this rule is exclusive to non-curtable load.

CUB notes that program caps are a way to protect cost-of-service customers from cost-shifting and recommends that current program caps remain in place unless and until the Commission finds that increasing caps will not cause "unwarranted shifting of costs or risks."⁵ During the rulemaking hearing, PGE similarly acknowledged that caps are useful tools for the utilities as a part of direct access programs. NIPPC agrees that the current cap for each utility should remain the same, and only modified at the conclusion of the contested case.

AHD Recommendation:

The Commission has the discretion to institute a cap no matter whether it is an express part of the direct access rules. While it could be argued that the Commission's authority renders the inclusion of this rule unnecessary, caps will be a primary issue in the contested case. Therefore, AHD recommends leaving this proposed rule in any adopted revisions to provide a starting point for the contested case discussion.

³ Staff Initial Formal Comments at 4 (Mar. 31, 2023).

⁴ *Id.*

⁵ CUB Formal Comments, Attachment of September 15, 2022, Comments at 3 (Apr. 20, 2023).

AR 651
 June 23, 2023
 Page 6

Utility Demonstration Criteria (OAR 860-038-0290(10))

The proposed rule currently states that the Commission will establish demonstration criteria to determine whether a utility attempted to serve a preferentially curtailable customer with uncommitted supply. Multiple participants expressed concern that this would be difficult without several modifications to the term “uncommitted supply” and more information on how the Commission would establish such criteria. Staff proposes allowing a revision that allows each electric utility to state, as a part of implementing individual program tariffs and rules, their specific demonstration criteria.

AHD Recommendation:

As each utility implements their direct access program, this revision provides each utility the flexibility to establish criteria aligned with their individual circumstances regarding uncommitted supply and in turn will provide customers with additional information about each utility’s direct access program. AHD recommends adopting this revision:

(10) ~~The Commission will establish~~ Each electric company’s tariff or program rules will specify criteria ~~the an~~ electric company may use to demonstrate that it sought to serve a preferentially curtailable consumer with Uncommitted Supply before curtailing that consumer.

Uncommitted Supply Rates for Curtailable Customers (OAR 860-038-0290 (11)) and Non-Curtailable Returning Customer Rates (OAR 860-038-0290 (14)):

In its final comments, Staff noted that multiple participants expressed concern that the language in sections (11) and (14) was unclear. According to Staff, participants interpreted the language in these two rule sections as offering two options to serve returning customers (utility supply or market supply) but requiring that the customer be charged the market rate regardless of supply type. Staff noted that the rule sections “intended for the rules to ensure that cost-of-service customers do not lose the benefits of selling utility generation into the market should the returning customer be served with utility supply.”⁶

Staff provided potential modifications to these two sections to clarify that these rule sections “should not prevent the utility from using market supply if it is a lower price alternative to the utility’s generation and capacity” and to clarify that any returning customers supplied with utility generation should be charged the higher market price at which the generation could have been sold. However, the rule is not intended to force

⁶ Staff Final Comments at 1-2 (Apr. 25, 2023).

AR 651
June 23, 2023
Page 7

the utility to charge the customer for generation and capacity if there is market supply at a lower cost.⁷

Staff also recommended the phrase "Commission-approved market rate." Since the Commission does not have an approved market rate, this phrase was not included in recommendation below.

AHD Recommendation:

To clarify that there are multiple, acceptable options for a utility serving returning customers, AHD recommends adopting Staff's modifications below.

(11) If a returning curtailable consumer is served with Uncommitted Supply, the consumer will be charged ~~the greater of the incremental capacity and energy costs or the retail energy market costs~~ a market rate required to serve on less than the required notice of return in the electric company's direct access program tariff. If the market rate is greater than the incremental cost of the electric company's capacity and energy supplied to the consumer, the consumer will be charged the market rate.

(14) If a non-curtailable consumer returns to the electric company's service without the required notice of return under an electric company's direct access program tariff, the electric company shall charge the non-curtailable consumer ~~the greater of the incremental capacity and energy costs or the retail energy market costs~~ a market rate required to serve on less than the required notice of return. If the market rate is greater than the incremental cost of the electric company's capacity and energy supplied to the consumer, the consumer will be charged the market rate.

Electric Company Eligibility Criteria (OAR 860-038-0290(15))

PacifiCorp recommended a rule section addition that allowed each utility to describe eligibility criteria for customers seeking to become preferentially curtailable. PacifiCorp noted in part that its recommendation provides each utility the opportunity describe the minimum detail necessary to include in utility tariffs, in order to allow for appropriate implementation of the process of determining how a consumer is

⁷ *Id.*

AR 651
June 23, 2023
Page 8

deemed “curtailable.”⁸ This recommendation also addresses PGE’s concern about whether certain critical facilities could or should participate in direct access programs.

AHD Recommendation:

AHD recommends the Commission adopt PacifiCorp’s recommendation for a new section in part. This recommendation allows each utility the ability to provide customers with information about eligibility criteria specific to each company’s individual direct access offering.

PacifiCorp recommended additional, prescriptive language as subsections for this proposed rule regarding utility liability. AHD considers liability language to be more suited for inclusion as a part of individual utility tariffs or program rules. AHD recommends adoption of the new rule section without the prescriptive subsections.

(15) Individual electric company tariffs will include a process for implementing preferential curtailment and will detail eligibility criteria for consumers seeking to become preferentially curtailable.

Limitations on Return to Direct Access (OAR 860-038-0290(16)(b))

The reason for the recommended revision of this rule provision is similar to the recommended modification in rule section (6) above. For planning purposes, the utility may specify the time period that a returning customer may choose to end taking default supply from the utility and take service under an ESS.

AHD Recommendation:

Adopt the recommended revision as shown for rule section (16) subsection (b):

(~~15~~16) Sections (13) and (14) of this rule do not limit a New Large Load Direct Access Program participant or long-term opt-out direct access consumer’s right to return from default supply to direct access unless:

(a) The consumer has provided a notice of return to the electric company’s service, or;

⁸ PacifiCorp Closing Comments at 5 (Apr. 25, 2023).

AR 651
June 23, 2023
Page 9

(b) The consumer remains on default supply for longer than the time period necessary to select an ESS and return to direct access service. ~~This time period will be determined by the Commission as specified in the~~ electric company's tariff.

Potential Substantive Issues for the Contested Case

Subsequent to deliberation on the rulemaking, the contested case will commence in docket UM 2024. The following issues have been recommended by participants during the rulemaking process to be addressed there.

- *Caps*: As discussed above, several participants in the rulemaking hearing and via comment agree that cap amounts must be decided in the contested case. The proposed rule section above only applies to non-curtable load.
- *Eligibility Criteria*: Relevant issues on whether a customer may be deemed curtable (*i.e.*, load thresholds, maximum time to curtail, potential waivers to certain requirements, etc.).
- *Utility Service Criteria*: what does the utility need to do to ensure it made reasonable efforts to serve a customer prior to curtailment?
- *Curtable Infrastructure Costs*: Identifying how customers will be informed of curtable infrastructure costs. How will these costs be collected?
- *Time Period for Default Service*: Time period in which a customer can remain on default supply before returning to an ESS or moving to cost of service.
- *Designating Non-Bypassable Charges*: What costs should not be avoidable by taking direct access service?

The Commission may choose to provide some direction on which issues should be included as a part of the contested case process.

Potential Procedural Issues for the Contested Case

In addition to the issues to be included in the contested case, the Commission may choose to prescribe how the contested case will move forward. The Commission may decide whether to allow parties to determine how the contested case moves forward, in terms of what procedural events should be included as a part of the contested case, the order of events and the amount of time appropriate for each event. The Commission may also leave it up to the parties to decide the procedural schedule. AHD notes that

AR 651
June 23, 2023
Page 10

this case has been ongoing for an extensive period of time. Direction from the Commission may assist in ensuring that the contested case is efficient and productive.

PROPOSED COMMISSION MOTION:

Adopt the proposed new and amended permanent direct access rules as filed with the Oregon Secretary of State on February 27, 2023, Notice of Proposed Rulemaking and Attachment B to this report;

Adopt the proposed revisions to preferential curtailment rule OAR 860-038-0290, as presented in the memorandum and Attachment A to this report;

Adopt the recommendations for contested case issues as recommended in this memorandum.

AR 651
Attachment A
Page 1

ADOPT: 860-038-0290

RULE TITLE: Preferential Curtailment

RULE SUMMARY: This rule directs utilities to curtail returning customers on emergency default service in specific scenarios.

RULE TEXT:

- (1) This rule becomes effective June 1, 2024.
- (2) Except as provided in sections (4), (8), and (9) of this rule, each electric company shall provide preferential curtailment of New Large Load Program participants, as defined in OAR 860-038-0700(2)(d), and long-term opt-out direct access consumers.
- (3) At the time a consumer makes its direct access election, New Large Load Direct Access Program participants and long-term opt-out direct access consumers must elect whether a given load will be curtailable or non-curtailable. A consumer that makes no such election will be deemed non-curtailable.
- (4) An electric company will not preferentially curtail the load of a direct access consumer when:
 - (a) The direct access consumer has elected to be non-curtailable during the election period; or,
 - (b) The direct access consumer's load is infeasible to curtail; or,
 - (c) When the preferential curtailment of a direct access consumer would negatively affect cost-of-service consumers.
- (5) Consumers already participating in New Large Load Direct Access Program or long-term opt-out direct access service must make the election defined in section (3) of this rule during the first annual election window that takes place at least 12 months after the ~~effective date of OAR 860-038-0290~~ an electric company has implemented tariffs and program rules necessary to implement this rule.
- (6) A consumer may change their curtailment election during the ~~annual~~ an election window ~~each year~~ after the length of time specified in an electric company's tariffs implementing these rules.
- (7) The Commission will establish a cap on non-curtailable direct access load to protect cost-of-service customers from the risks and costs associated with direct access consumers' return to an electric company's system.
- (8) Using a Commission-approved methodology, an electric company may collect a reasonable charge from a direct access consumer to recover necessary costs for system upgrades that operationalize preferential curtailment of that consumer. Any given load that a consumer elects to be curtailable will be considered non-curtailable until the system upgrades required to curtail the load are installed, tested, and properly functioning.

AR 651
Attachment A
Page 2

(9) If a preferentially curtailable consumer returns to default supply without providing the required time for notice of return under the electric company's direct access program tariff, the electric company must make best efforts to serve the consumer with Uncommitted Supply.

(10) ~~The Commission will establish~~ Each electric company's tariff or program rules will specify criteria ~~the an~~ electric company may use to demonstrate that it sought to serve a preferentially curtailable consumer with Uncommitted Supply before curtailing that consumer.

(11) If a returning curtailable consumer is served with Uncommitted Supply, the consumer will be charged ~~the greater of~~ the incremental capacity and energy costs or ~~the retail energy market costs a market rate~~ required to serve on less than the required notice of return in the electric company's direct access program tariff. If the market rate is greater than the incremental cost of the electric company's capacity and energy supplied to the consumer, the consumer will be charged the market rate.

(12) If Uncommitted Supply is not available, the electric company may preferentially curtail returning nonresidential direct access consumers' load that has been elected to be curtailable.

(13) A preferentially curtailable consumer that returns to the electric company's service without the required notice of return under the electric company's direct access program tariff shall be subject to potential curtailment for a period equal to the remaining time for notice of return.

(14) If a non-curtailable consumer returns to the electric company's service without the required notice of return under an electric company's direct access program tariff, the electric company shall charge the non-curtailable consumer ~~the greater of~~ the incremental capacity and energy costs or ~~the retail energy market costs a market rate~~ required to serve on less than the required notice of return. If the market rate is greater than the incremental cost of the electric company's capacity and energy supplied to the consumer, the consumer will be charged the market rate.

(15) Individual electric company tariffs will include a process for implementing preferential curtailment and will detail eligibility criteria for consumers seeking to become preferentially curtailable.

~~(16)~~ Sections (13) and (14) of this rule do not limit a New Large Load Direct Access Program participant or long-term opt-out direct access consumer's right to return from default supply to direct access unless:

(a) The consumer has provided a notice of return to the electric company's service, or;

(b) The consumer remains on default supply for longer than the time period necessary to select an ESS and return to direct access service. ~~This time period will be determined by the Commission as specified in the electric company's tariff.~~

Statutory/Other Authority: ORS 183, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.600-757.667

RULES PROPOSED:

860-038-0005, 860-038-0170, 860-038-0290, 860-038-0300, 860-038-0405, 860-038-0590, 860-038-0740

AMEND: 860-038-0005

RULE SUMMARY: This rule adds a definition for "Preferential Curtailment," deletes unnecessary definitions, arranges the definitions alphabetically, and renumbers the rule provisions.

CHANGES TO RULE:

860-038-0005

Definitions for Direct Access Regulation ¶¶

As used in this Division:¶¶

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.¶¶

~~(2) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:¶¶~~

~~(a) Local governments;¶¶~~

~~(b) Electric companies;¶¶~~

~~(c) Residential consumers;¶¶~~

~~(d) Public or regional interest groups; and¶¶~~

~~(e) Small nonresidential consumers.¶¶~~

~~(3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.¶¶~~

~~(4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.¶¶~~

~~(5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control, and energy balancing services.¶¶~~

~~(6) "Commission" means the Public Utility Commission of Oregon.¶¶~~

~~(7) "Common costs" means costs that cannot be directly assigned to a particular function.¶¶~~

~~(8) (3) "Competitive operations" means any electric company's activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:¶¶~~

~~(a) Energy efficiency audits and programs;¶¶~~

~~(b) Sales, installation, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and¶¶~~

~~(c) Energy management services, including those services related to electricity metering and billing. Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.¶¶~~

~~(9) "Constructing and operating," as used in ORS 757.612(3)(b)(B), means constructing, or operating, or both.¶¶~~

~~(a) As used in ORS 757.612(3)(b)(B), "constructing" includes the following activities:¶¶~~

~~(A) Pre-development project studies, activities or costs that are related to the planned development of a new renewable energy resource that a developer or owner would reasonably expect to incur; and¶¶~~

~~(B) Activities or costs directly related to the building of a new renewable energy resource.¶¶~~

~~(b) As used in ORS 757.612(3)(b)(B), "operating" includes the activities and costs necessary for a new renewable energy resource to function and to be maintained in good working order.¶¶~~

~~(10) "Consumer-owned utility" means a municipal electric utility, a people's utility district, or an electric cooperative.¶¶~~

~~(11) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.¶¶~~

~~(12) (4) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a~~

consumer, as determined by the Commission.¶

~~(135)~~ "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.¶

~~(146)~~ "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.¶

~~(15)~~ "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.¶

~~(16)~~ "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.¶

~~(17)~~ "Divestiture" means the sale of all or a portion of an electric company's ownership share of a generation asset to a third party.¶

~~(187)~~ "Economic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.¶

~~(19)~~ "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.¶

~~(208)~~ "Electric company operational information" means information obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as "competitive operations." Such information includes, but is not limited to, data relating to the interconnection of customers to an electric company's transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company's transmission or distribution system, processes, operations, or plans or strategies for expansion.¶

~~(21)~~ "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.¶

~~(22)~~ "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.¶

~~(23)~~ "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.¶

~~(24)~~ "Electricity services" means electricity distribution, transmission, generation, or generation-related services.¶

~~(252)~~ "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.¶

~~(2610)~~ "Emergency default service" means a service option provided by an electric company to a nonresidential consumer that requires less than five business days' notice by the consumer or its electricity service supplier.¶

~~(2711)~~ "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.¶

~~(128)~~ "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.¶

~~(2913)~~ "Joint marketing" means the offering (including marketing, promotion, or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its Oregon affiliate, or through contact initiated by the consumer.¶

~~(3014)~~ "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.¶

~~(31)~~ "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.¶

~~(32)~~ "Local energy conservation" means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.¶

~~(33)~~ "Low-income weatherization" means repairs, weatherization, and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.¶

~~(34)~~ "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.¶

~~(315)~~ "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.¶

APPENDIX A

PAGE 14 of 25

~~(316)~~ "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.¶

~~(37)~~ "New" as it refers to energy conservation, market transformation, and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.¶

~~(38)~~ "New renewable energy resource," as used in ORS 757.612(3)(b)(B), has the meaning provided in 757.600(21) and references a specifically identified project that has, or is planned to have after construction, a nominal electric generating capacity, as defined in 469.300, of 20 megawatts or less.¶

~~(3917)~~ "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.¶

~~(40)~~ "Nonresidential consumer" means a retail electricity consumer who is not a residential consumer.¶

~~(418)~~ "Ongoing valuation" means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.¶

~~(4219)~~ "One-time administrative valuation" means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.¶

~~(4320)~~ "One average megawatt" means 8,760,000 kilowatt-hours (8,784,000 in a leap year) of electricity per twelve consecutive month period.¶

~~(44)~~ "Oregon affiliate" means an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.¶

~~(4521)~~ "Oregon share" means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.¶

~~(4622)~~ "People's utility district" has the meaning given that term in ORS 261.010. Non-bypassable Charges" are costs that are directed by the legislature to be recovered by all customers or charges that retail consumers served by electricity service suppliers otherwise may avoid by obtaining electric power through direct access that are determined by the Commission to be appropriate for recovery from all customers.¶

~~(4723)~~ "Portfolio" means a set of product and pricing options for electricity.¶

~~(4824)~~ "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:¶

(a) Local governments;¶

(b) Electric companies;¶

(c) Residential consumers;¶

(d) Public or regional interest groups; and¶

(e) Small nonresidential consumers.¶

(25) "Preferential Curtailment" refers to the electric company's obligation to curtail eligible direct access consumers that return to the electric company service without providing the electric company with the full period of notice required by the electric company's direct access program tariff. The electric company must curtail such consumers as necessary to protect cost-of-service customers from the impacts of the returning consumer's unplanned load.¶

(26) "Proprietary consumer information" means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.¶

~~(4927)~~ "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Oregon Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.¶

~~(5028)~~ "Registered dispute" means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission's Consumer Services Section but is not the subject of a formal complaint.¶

~~(51)~~ "Regulated charges" means charges for services subject to the jurisdiction of the Commission.¶

~~(52)~~ "Regulatory assets" means assets that result from rate actions of regulatory agencies.¶

~~(5329)~~ "Renewable energy resources" means:¶

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;¶

(b) Dedicated energy crops available on a renewable basis;¶

(c) Landfill gas and digester gas; and¶

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.¶

~~(5430)~~ "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.¶

~~(5531)~~ "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.¶

~~(5632)~~ "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.¶

~~(57)~~ "Serious injury to person" has the meaning given in OAR 860-024-0050.¶

~~(58)~~ "Serious injury to property" has the meaning given in OAR 860-024-0050.¶

~~(5933)~~ "Site" means:¶

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or¶

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:¶

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;¶

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and¶

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.¶

~~(60)~~ "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.¶

~~(61)~~ "Special contract" means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.¶

~~(6234)~~ "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.¶

~~(635)~~ "Total transition amount" means the sum of an electric company's transition costs and transition benefits.¶

~~(364)~~ "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.¶

~~(6537)~~ "Transition benefits" means the value of the below-market costs of an economic utility investment.¶

~~(6638)~~ "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.¶

~~(6739)~~ "Transition costs" means the value of the above-market costs of an uneconomic utility investment.¶

~~(6840)~~ "Transition credit" means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.¶

~~(6941)~~ "Transmission grid" means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries. Unbundling means the process of assigning and allocating a utility's costs into functional categories.¶

(42) "Uncommitted Supply" is generation reasonably available to the electric company in the market or through the electric company's own resources. Uncommitted Supply excludes any generation needed to meet the electric company's firm load service obligations, anticipated near-term load obligations, contractual obligations, and

federal reliability standards.¶

~~(7043) "Unbundling" means the process of assigning and allocating a utility's costs into functional categories.¶~~

~~(71) "Economic Cost of Implementing a Public Policy Goal" means the difference between the cost of implementing the public policy goal and the regulated costs that are avoided as a result of implementing the public policy goal.¶~~

(44) "Uneconomic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.¶

(7245) "Unspecified Market Purchase Mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Oregon Department of Energy.

Statutory/Other Authority: ORS 183, ~~756~~, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

RULE SUMMARY: This rule articulates criteria used in Commission determinations on whether a charge should not be able to be bypassed as a result of taking Direct Access service.

CHANGES TO RULE:

860-038-0170

Non-bypassable Charges

(1) In determining whether a cost is appropriate for recovery as a non-bypassable charge, the Commission shall consider the following factors:¶

(a) whether it is required by statute;¶

(b) whether it is an uneconomic cost of implementing a public policy goal such as those identified in ORS 469A.465 or similar public policy goals related to reliability, equity, decarbonization, resiliency or other public interest for which retail consumers served by electricity service suppliers otherwise would not meaningfully contribute;¶

(c) whether or not it confers a demonstrable electric system benefit on some customers over others;¶

(d) whether it is in the public interest;¶

(e) whether it is necessary to be non-bypassable under the Commission's discretion in order to establish fair, just, and reasonable rates and prevent unwarranted cost shifting.¶

(2) All retail electricity consumers served by Direct Access are responsible for paying Non-bypassable Charges as determined by the Commission.

Statutory/Other Authority: ORS 183, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

RULE SUMMARY: This rule change directs ESSs to disclose energy supply mix and the associated emissions annually.

CHANGES TO RULE:

860-038-0300

Electric Company and Electricity Service Suppliers Labeling Requirements ¶

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.¶

(2) An electricity service provider must post a summary of the aggregated energy supply mix and associated emissions for the Direct Access load served in Oregon in the previous year. When historic data is unavailable, the ESS must use a reasonable estimate of future resource mix. The summary must be updated on November 15 of each year (or the next business day if November 15 falls on a Saturday, Sunday, or legal holiday as defined by ORS 187.010) and either included on or via a link on its indicative pricing website as required under OAR 860-038-0275.¶

(3) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers annually, or at a frequency prescribed by the Commission. The information must be based on the available service options. The information must be supplied consistent with the requirements prescribed by the Commission. The electric company must report price information for each service or product for residential consumers based on the average monthly bill and price per kilowatt-hour for the available service options.¶

~~(34)~~ An electric company and an electricity service supplier must provide price, power source and environmental impact information to nonresidential consumers consistent with the requirements and frequency prescribed by the Commission. An electric company and an electricity service supplier must report price information for nonresidential consumers as follows:¶

- (a) The price and amount due for each service or product that a nonresidential consumer is purchasing;¶
- (b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;¶
- (c) The amount of any public purpose charge; and¶
- (d) The amount of any transition charge or credit.¶

~~(45)~~ For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the unspecified market purchase mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the unspecified market purchase mix. The electric company must report power source and environmental impact information for standard offer sales based on the unspecified market purchase mix.¶

~~(56)~~ For purposes of power source and environmental impact reporting, an electric company and an electricity service supplier should use the most recent unspecified market purchase mix unless the electric company or electricity service supplier is able to demonstrate a different power source mix and environmental impact. A demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar year. Power source must be reported as the percentages of the total product supply including the following:¶

- (a) Coal;¶
- (b) Hydroelectricity;¶
- (c) Natural gas;¶
- (d) Nuclear; and¶
- (e) Other power sources including but not limited to new renewable resources, if over 1.5 percent of the total power source mix.¶

~~(67)~~ Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:¶

- (a) Carbon dioxide, measured in lbs./kWh of CO₂ emissions;¶
- (b) Sulfur dioxide, measured in lbs./kWh of SO₂ emissions;¶
- (c) Nitrogen oxides, measured in lbs./kWh of NO_x emissions; and¶

APPENDIX A
PAGE 19 of 25

(d) Mercury, measured in lbs/kWh of Hg emission.¶

~~(78)~~ Every bill to a direct access consumer must contain the electricity service supplier's and the electric company's toll-free number for inquiries and instructions as to those services and safety issues for which the consumer should directly contact the electric company.¶

~~(82)~~ The electricity service supplier must provide price, power source, and environmental impact in all contracts and marketing information.¶

~~(910)~~ The electric company must provide price, power source, and environmental impact in all standard offer marketing information.¶

~~(101)~~ By September 1, each electric company and each electricity service supplier making any claim other than unspecified market purchase mix must file a reconciliation report for the prior calendar year on forms prescribed by the Commission. The report must provide a comparison of the power source mix and emissions of all of the seller's certificates, purchase or generation with the claimed power source mix and emissions of all of the seller's products and sales.¶

~~(142)~~ Each electricity service supplier and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.

Statutory/Other Authority: ORS 183, 756, 757

Statutes/Other Implemented: ORS 756.040, 757.600 - 757.667

ADOPT: 860-038-0405

RULE SUMMARY: This rule establishes the requirements for annual forward-looking ESS Emissions Planning Reports and DEQ emissions reports.

CHANGES TO RULE:

860-038-0405

ESS Emissions Planning Report

(1) From June 1, 2024, through May 30, 2027, each ESS certified pursuant to ORS 757.649 that has sold electricity to retail electricity consumers in Oregon in the previous calendar year or has executed a contract to sell electricity to retail electricity consumers in Oregon within the following three calendar years are required to file a copy of the annual greenhouse gas emissions report submitted to the Oregon Department of Environmental Quality in accordance with Oregon Laws 2021, Chapter 508, Section 5(4)(a) within 10 days of filing with the Oregon Department of Environmental Quality.

(2) Beginning on January 1, 2027, each ESS certified under ORS 757.649 that has sold electricity to retail electricity consumers in Oregon in the previous calendar year or has executed a contract to sell electricity to retail electricity consumers in Oregon within the following three calendar years are required to file a report in accordance with section (3) of this rule. If prescribed by the Commission, each ESS must use established forms to provide information required under this rule.

(3) Each ESS must file an Emissions Planning Report on or before June 1 of each calendar year that includes the following:

(a) A cover-page with a checklist for each item required by the report, as set forth in this section, and an indication of where that information is found in the report and whether specified information is confidential subject to a protective order. A uniform template for the cover page checklist and Protective Order will be provided on the Commission website under the Reports & Forms section.

(b) A summary of the specific electricity-generating resources, MWh generation from those resources, emissions per MWh (MTCO₂e/MWh) associated with serving Oregon Direct Access customers, and all emissions from the previous calendar year that were reported to DEQ;

(c) A load forecast for each of the following three consecutive years, aggregate for all Oregon Direct Access customers;

(d) An estimate of the annual greenhouse gas emissions associated with serving Oregon Direct Access customers, forecasted for the following three consecutive years;

(e) An action plan that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology;

(f) An analysis of the \$/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for each of the next 3 years, and

(g) Anticipated actions to facilitate rapid reductions of greenhouse gas emissions at reasonable costs to retail electricity consumers served by the ESS, including but not limited to:

(A) Development of non-emitting dispatchable resources;

(B) Demand response offerings;

(C) Energy efficiency offerings; and

(D) Onsite renewable generation.

(4) ESS's serving customers or generating electricity in multiple electric company service territories must separate the report's contents referred to in section (3) of this rule by each unique service territory.

(5) Commission staff and interested persons may file written comments on each ESS's Emissions Planning Report within 45 calendar days of the filing. The ESS may file a written response to any comments within 30 calendar days thereafter. After considering written comments, the Commission may decide to commence an investigation, begin a proceeding, or take other action as necessary to make a determination regarding Oregon Laws 2021, Chapter 508, Section 5 requirement for continual and reasonable progress toward compliance with the clean energy targets set forth in Oregon Laws 2021, Chapter 508, Section 3.

(6) Upon conclusion of the Commission review of the report in section (3) of this rule, the Commission will issue a decision to acknowledge the ESS's Emissions Planning Report if it demonstrates continual and reasonable progress toward compliance with state clean energy targets. If the Commission determines the Emissions Planning Report does not demonstrate continual and reasonable compliance, the ESS must file an updated Emissions Planning Report that addresses the Commission's concerns within 90 days.

(7) The ESS must post a non-confidential version of the Emissions Planning Report on its website within 30 days of the Commission decision whether to accept the report. The ESS must also provide information about its compliance report to its customers by bill insert or other Commission-approved method.

APPENDIX A

PAGE 21 of 25

(8) Availability of Information:¶

(a) Information regarding an analysis of the \$/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for each of the next 3 years, as required by section 3(f) of this rule will be available for review only by Qualified Statutory Parties, meaning any Commission Staff and any representatives of the Citizen's Utility Board, who executed a modified protective order.¶

(b) The following information shall be available for review only by Non-Market Participants that have executed a modified protective order:¶

(A) Action plan that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology, as required in Section 3(e) of this rule; ¶

(B) Information regarding the load forecast for each of the following three consecutive years, aggregate for all Oregon Direct Access customers, as required by Section 3(c) of this rule; and ¶

(C) The summary of the specific electricity-generating resources and MWh generation from those resources, as required by Section 3(b) of this rule. ¶

(c) For purposes of this rule, Non-Market Participants includes Commission Staff, the Citizen's Utility Board, and non-profit organizations engaged in environmental advocacy that do not otherwise participate in electricity markets.

Statutory/Other Authority: ORS 183, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.600-757.667

RULE SUMMARY: This rule is amended to provide a necessary exception from section (3) in the event that the preferential curtailment rules in OAR 860-038-0290 are applied and to make housekeeping changes.

CHANGES TO RULE:

860-038-0590

Transmission and Distribution Access ¶¶

- (1) An electric company may be relieved of some or all of the requirements of this rule by placing its transmission facilities under the control of a regional transmission organization consistent with FERC Order No. 2000 and obtaining Commission approval of an exemption.¶¶
- (2) An ESS may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs. The electric company ~~shall~~must coordinate the filings of these tariffs to ensure that all retail and direct access consumers are offered comparable services at comparable prices.¶¶
- (3) Except as otherwise directed by OAR 860-038-0290, each electric company ~~shall~~must provide nondiscriminatory access to transmission, distribution, and ancillary services, including transmission into import-limited areas and local generation resources within import-limited areas, to serve all retail consumers. An electric company ~~shall~~may not give preference or priority in transmission and distribution pricing, transmission and distribution access, or access to, pricing of, or provision of ancillary services and local generation resources, to itself or its affiliate relative to persons or entities requesting transmission or distribution access to serve direct access consumers. No preference or priority may be given to, nor any different obligation assigned to, any consumer based solely on whether the consumer is purchasing service from an electric company or an ESS.¶¶
- (a) Any transmission or distribution capacity to which an electric company has entitlements, by ownership or by contract, for the purpose of serving its Oregon load ~~shall be~~must made available to an electric company and ESSs that are serving such load on at least a pro rata basis. An electric company ~~shall~~must describe in its tariff filings how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if:¶¶
- (A) Access to the electric company's transmission or distribution facilities or entitlements is restricted by contract or by regulatory obligations in other jurisdictions; or¶¶
- (B) If providing transmission or distribution service on a pro rata basis would result in stranding generating capacity owned or provided through contract by the electric company;¶¶
- (b) Except for those ancillary services required by FERC to be purchased from an electric company, an ESS may acquire, on behalf of the retail loads for which it is responsible, all ancillary services required relative to the transmission of electricity by any combination of:¶¶
- (A) Purchases under the electric company's Open Access Transmission Tariff;¶¶
- (B) Self-provision; or¶¶
- (C) Purchases from a third party;¶¶
- (c) Energy imbalance obligations, including the pricing of imbalances and penalties for imbalances, ~~shall~~must be developed to reasonably minimize imbalances and to meet the needs of the direct access market environment. The electric company ~~shall~~must address such energy imbalance obligations in its proposed FERC tariffs. Energy imbalance obligations imposed upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, ~~shall~~must comply with the following:¶¶
- (A) The obligations ~~shall~~ impose substantively comparable burdens upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, and ~~shall~~may not unreasonably differentiate between consumers that are entitled to direct access on the basis of customer class, provider of the service, or type of access;¶¶
- (B) The obligations ~~shall~~ recognize the practical scheduling and operational limitations associated with serving retail consumer loads in the direct access environment, but ~~shall~~ require ESSs, including the entity serving the standard offer load, to make reasonable efforts to minimize their energy imbalances on an hourly basis;¶¶
- (C) The obligations ~~shall~~ be designed with the objective of deterring ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company from burdening electric system operation or gaining economic advantage by under-scheduling, over-scheduling, under-generating or over-generating. The obligations ~~shall~~may not be punitive in nature; and¶¶
- (D) The obligations ~~shall~~ enable an electric company and ESSs, including the entity serving the standard offer load, to settle for energy imbalance obligations on a financial basis, unless otherwise mutually agreed to by the parties.¶¶
- (d) Where local generation is required to operate for electric system security or where there is insufficient transmission import capability to serve retail loads without the use of local generation, the electric company ~~shall~~must make services available from such local generation under its ownership or control to ESSs consistent

ORDER NO. 23-305

with the electric company's provision of services to standard offer consumers, residential consumers, and other retail consumers. The electric company ~~shall~~must also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;¶

(e) The electric company's tariffs ~~shall~~must specify prices, terms, and conditions for scheduling, billing, and settlement. Other functions may be specified as needed;¶

(f) An electric company's tariffs ~~shall~~must include a dispute resolution process to resolve issues between the electric company and the ESSs that serve the retail load of an electric company in a timely manner. Such processes ~~shall~~must provide that unresolved disputes related to such retail access matters may be appealed to the Commission.¶

(4) If adherence to ~~OAR 860-038-0590~~this rule requires FERC approval of tariff or contract provisions, the electric company must petition FERC for the approval of the tariff or contract provisions ~~within 90 days of the effective date of this rule. Subsequent tariffs or contracts requiring FERC approval will be made~~ in a timely manner.

Statutory/Other Authority: ORS 183, ~~756~~, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

AMEND: 860-038-0005

RULE TITLE: Definitions for Direct Access Regulation

RULE SUMMARY: This rule adds a definition for "Preferential Curtailment," deletes unnecessary definitions, arranges the definitions alphabetically, and renumbers the rule provisions.

RULE TEXT:

As used in this Division:

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control, and energy balancing services.

(3) "Competitive operations" means any electric company's activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:

(a) Energy efficiency audits and programs;

(b) Sales, installation, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and

(c) Energy management services, including those services related to electricity metering and billing. Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.

(4) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(5) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(6) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(7) "Economic utility investment" means all Oregon allocated investments made by an electric

company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(8) "Electric company operational information" means information obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as "competitive operations." Such information includes, but is not limited to, data relating to the interconnection of customers to an electric company's transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company's transmission or distribution system, processes, operations, or plans or strategies for expansion.

(9) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(10) "Emergency default service" means a service option provided by an electric company to a nonresidential consumer that requires less than five business days' notice by the consumer or its electricity service supplier.

(11) "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

(12) "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.

(13) "Joint marketing" means the offering (including marketing, promotion, or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its Oregon affiliate, or through contact initiated by the consumer.

(14) "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

(15) "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(16) "New" as it refers to energy conservation, market transformation, and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is

offered by an electric company.

(17) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.

(18) "Ongoing valuation" means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

(19) "One-time administrative valuation" means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(20) "One average megawatt" means 8,760,000 kilowatt-hours (8,784,000 in a leap year) of electricity per twelve consecutive month period.

(21) "Oregon share" means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(22) "Non-bypassable Charges" are costs that are directed by the legislature to be recovered by all customers or charges that retail consumers served by electricity service suppliers otherwise may avoid by obtaining electric power through direct access that are determined by the Commission to be appropriate for recovery from all customers.

(23) "Portfolio" means a set of product and pricing options for electricity.

(24) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:

- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers;
- (d) Public or regional interest groups; and
- (e) Small nonresidential consumers.

(25) "Preferential Curtailment" refers to the electric company's obligation to curtail eligible direct access consumers that return to the electric company service without providing the electric company with the full period of notice required by the electric company's direct access program tariff. The

electric company must curtail such consumers as necessary to protect cost-of-service customers from the impacts of the returning consumer's unplanned load.

(26) "Proprietary consumer information" means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.

(27) "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Oregon Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(28) "Registered dispute" means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission's Consumer Services Section but is not the subject of a formal complaint.

(29) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(30) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(31) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user

purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.

(32) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(33) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(34) "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.

(35) "Total transition amount" means the sum of an electric company's transition costs and transition benefits.

(36) "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.

(37) "Transition benefits" means the value of the below-market costs of an economic utility investment.

- (38) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.
- (39) "Transition costs" means the value of the above-market costs of an uneconomic utility investment.
- (40) "Transition credit" means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.
- (41) "Unbundling" means the process of assigning and allocating a utility's costs into functional categories.
- (42) "Uncommitted Supply" is generation reasonably available to the electric company in the market or through the electric company's own resources. Uncommitted Supply excludes any generation needed to meet the electric company's firm load service obligations, anticipated near-term load obligations, contractual obligations, and federal reliability standards.
- (43) "Uneconomic Cost of Implementing a Public Policy Goal" means the difference between the cost of implementing the public policy goal and the regulated costs that are avoided as a result of implementing the public policy goal.
- (44) "Uneconomic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.
- (45) "Unspecified Market Purchase Mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Oregon Department of Energy.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.600 - 757.667

ADOPT: 860-038-0170

RULE TITLE: Non-bypassable Charges

RULE SUMMARY: This rule articulates criteria used in Commission determinations on whether a charge should not be able to be bypassed as a result of taking Direct Access service.

RULE TEXT:

(1) In determining whether a cost is appropriate for recovery as a non-bypassable charge, the Commission shall consider the following factors:

(a) whether it is required by statute;

(b) whether it is an uneconomic cost of implementing a public policy goal such as those identified in ORS 469A.465 or similar public policy goals related to reliability, equity, decarbonization, resiliency or other public interest for which retail consumers served by electricity service suppliers otherwise would not meaningfully contribute;

(c) whether or not it confers a demonstrable electric system benefit on some customers over others;

(d) whether it is in the public interest;

(e) whether it is necessary to be non-bypassable under the Commission's discretion in order to establish fair, just, and reasonable rates and prevent unwarranted cost shifting.

(2) All retail electricity consumers served by Direct Access are responsible for paying Non-bypassable Charges as determined by the Commission.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.600 - 757.667

ADOPT: 860-038-0290

RULE TITLE: Preferential Curtailment

RULE SUMMARY: This rule directs utilities to curtail returning customers on emergency default service in specific scenarios.

RULE TEXT:

- (1) This rule becomes effective June 1, 2024.
- (2) Except as provided in sections (4), (8), and (9) of this rule, each electric company shall provide preferential curtailment of New Large Load Program participants, as defined in OAR 860-038-0700(2)(d), and long-term opt-out direct access consumers.
- (3) At the time a consumer makes its direct access election, New Large Load Direct Access Program participants and long-term opt-out direct access consumers must elect whether a given load will be curtailable or non-curtailable. A consumer that makes no such election will be deemed non-curtailable.
- (4) An electric company will not preferentially curtail the load of a direct access consumer when:
 - (a) The direct access consumer has elected to be non-curtailable during the election period, or,
 - (b) The direct access consumer's load is infeasible to curtail, or,
 - (c) When the preferential curtailment of a direct access consumer would negatively affect cost-of-service consumers.
- (5) Consumers already participating in New Large Load Direct Access Program or long-term opt-out direct access service must make the election defined in section (3) of this rule during the first annual election window that takes place at least 12 months after the date an electric company has implemented tariffs and program rules necessary to implement this rule.
- (6) A consumer may change their curtailment election during an election window after the length of time specified in an electric company's tariffs implementing these rules.
- (7) The Commission will establish a cap on non-curtailable direct access load to protect cost-of-service customers from the risks and costs associated with direct access consumers' return to an electric company's system.
- (8) Using a Commission-approved methodology, an electric company may collect a reasonable charge from a direct access consumer to recover necessary costs for system upgrades that operationalize preferential curtailment of that consumer. Any given load that a consumer elects to be curtailable will be considered non-curtailable until the system upgrades required to curtail the load are installed, tested, and properly functioning.
- (9) If a preferentially curtailable consumer returns to default supply without providing the required time for notice of return under the electric company's direct access program tariff, the electric company must make best efforts to serve the consumer with Uncommitted Supply.
- (10) Each electric company's tariff or program rules will specify criteria an electric company may use to demonstrate that it sought to serve a preferentially curtailable consumer with Uncommitted Supply before curtailing that consumer.

(11) If a returning curtailable consumer is served with Uncommitted Supply, the consumer will be charged the incremental capacity and energy costs or a market rate required to serve on less than the required notice of return in the electric company's direct access program tariff. If the market rate is greater than the incremental cost of the electric company's capacity and energy supplied to the consumer, the consumer will be charged the market rate.

(12) If Uncommitted Supply is not available, the electric company may preferentially curtail returning nonresidential direct access consumers' load that has been elected to be curtailable.

(13) A preferentially curtailable consumer that returns to the electric company's service without the required notice of return under the electric company's direct access program tariff shall be subject to potential curtailment for a period equal to the remaining time for notice of return.

(14) If a non-curtailable consumer returns to the electric company's service without the required notice of return under an electric company's direct access program tariff, the electric company shall charge the non-curtailable consumer the incremental capacity and energy costs or a market rate required to serve on less than the required notice of return. If the market rate is greater than the incremental cost of the electric company's capacity and energy supplied to the consumer, the consumer will be charged the market rate.

(15) Individual electric company tariffs will include a process for implementing preferential curtailment and will detail eligibility criteria for consumers seeking to become preferentially curtailable.

(16) Sections (13) and (14) of this rule do not limit a New Large Load Direct Access Program participant or long-term opt-out direct access consumer's right to return from default supply to direct access unless:

(a) The consumer has provided a notice of return to the electric company's service, or;

(b) The consumer remains on default supply for longer than the time period necessary to select an ESS and return to direct access service as specified in the electric company's tariff.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.600-757.667

AMEND: 860-038-0300

RULE TITLE: Electric Company and Electricity Service Suppliers Labeling Requirements

RULE SUMMARY: This rule change directs ESSs to disclose energy supply mix and the associated emissions annually.

RULE TEXT:

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.

(2) An electricity service provider must post a summary of the aggregated energy supply mix and associated emissions for the Direct Access load served in Oregon in the previous year. When historic data is unavailable, the ESS must use a reasonable estimate of future resource mix. The summary must be updated on November 15 of each year (or the next business day if November 15 falls on a Saturday, Sunday, or legal holiday as defined by ORS 187.010) and either included on or via a link on its indicative pricing website as required under OAR 860-038-0275.

(3) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers annually, or at a frequency prescribed by the Commission. The information must be based on the available service options. The information must be supplied consistent with the requirements prescribed by the Commission. The electric company must report price information for each service or product for residential consumers based on the average monthly bill and price per kilowatt-hour for the available service options.

(4) An electric company and an electricity service supplier must provide price, power source and environmental impact information to nonresidential consumers consistent with the requirements and frequency prescribed by the Commission. An electric company and an electricity service supplier must report price information for nonresidential consumers as follows:

(a) The price and amount due for each service or product that a nonresidential consumer is purchasing;

(b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;

(c) The amount of any public purpose charge; and

(d) The amount of any transition charge or credit.

(5) For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the unspecified market purchase mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff

unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the unspecified market purchase mix. The electric company must report power source and environmental impact information for standard offer sales based on the unspecified market purchase mix.

(6) For purposes of power source and environmental impact reporting, an electric company and an electricity service supplier should use the most recent unspecified market purchase mix unless the electric company or electricity service supplier is able to demonstrate a different power source mix and environmental impact. A demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar year. Power source must be reported as the percentages of the total product supply including the following:

- (a) Coal;
- (b) Hydroelectricity;
- (c) Natural gas;
- (d) Nuclear; and
- (e) Other power sources including but not limited to new renewable resources, if over 1.5 percent of the total power source mix.

(7) Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:

- (a) Carbon dioxide, measured in lbs./kWh of CO₂ emissions;
- (b) Sulfur dioxide, measured in lbs./kWh of SO₂ emissions;
- (c) Nitrogen oxides, measured in lbs./kWh of NO_x emissions; and
- (d) Mercury, measured in lbs./kWh of Hg emission.

(8) Every bill to a direct access consumer must contain the electricity service supplier's and the electric company's toll-free number for inquiries and instructions as to those services and safety issues for which the consumer should directly contact the electric company.

(9) The electricity service supplier must provide price, power source, and environmental impact in all contracts and marketing information.

(10) The electric company must provide price, power source, and environmental impact in all standard offer marketing information.

(11) By September 1, each electric company and each electricity service supplier making any claim other than unspecified market purchase mix must file a reconciliation report for the prior calendar year on forms prescribed by the Commission. The report must provide a comparison of the power source mix and emissions of all of the seller's certificates, purchase or generation with the claimed power source mix and emissions of all of the seller's products and sales.

(12) Each electricity service supplier and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, 757.600 - 757.667

ADOPT: 860-038-0405

RULE TITLE: ESS Emissions Planning Report

RULE SUMMARY: This rule establishes the requirements for annual forward-looking ESS Emissions Planning Reports and DEQ emissions reports.

RULE TEXT:

(1) From June 1, 2024, through May 30, 2027, each ESS certified pursuant to ORS 757.649 that has sold electricity to retail electricity consumers in Oregon in the previous calendar year or has executed a contract to sell electricity to retail electricity consumers in Oregon within the following three calendar years are required to file a copy of the annual greenhouse gas emissions report submitted to the Oregon Department of Environmental Quality in accordance with Oregon Laws 2021, Chapter 508, Section 5(4)(a) within 10 days of filing with the Oregon Department of Environmental Quality.

(2) Beginning on January 1, 2027, each ESS certified under ORS 757.649 that has sold electricity to retail electricity consumers in Oregon in the previous calendar year or has executed a contract to sell electricity to retail electricity consumers in Oregon within the following three calendar years are required to file a report in accordance with section (3) of this rule. If prescribed by the Commission, each ESS must use established forms to provide information required under this rule.

(3) Each ESS must file an Emissions Planning Report on or before June 1 of each calendar year that includes the following:

(a) A cover-page with a checklist for each item required by the report, as set forth in this section, and an indication of where that information is found in the report and whether specified information is confidential subject to a protective order. A uniform template for the cover page checklist and Protective Order will be provided on the Commission website under the Reports & Forms section;

(b) A summary of the specific electricity-generating resources, MWh generation from those resources, emissions per MWh (MTCO₂e/MWh) associated with serving Oregon Direct Access customers, and all emissions from the previous calendar year that were reported to DEQ;

(c) A load forecast for each of the following three consecutive years, aggregate for all Oregon Direct Access customers;

(d) An estimate of the annual greenhouse gas emissions associated with serving Oregon Direct Access customers, forecasted for the following three consecutive years;

(e) An action plan that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology;

(f) An analysis of the \$/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for each of the next 3 years, and

(g) Anticipated actions to facilitate rapid reductions of greenhouse gas emissions at reasonable costs to retail electricity consumers served by the ESS, including but not limited to:

(A) Development of non-emitting dispatchable resources;

(B) Demand response offerings;

(C) Energy efficiency offerings; and

(D) Onsite renewable generation.

(4) ESS's serving customers or generating electricity in multiple electric company service territories must separate the report's contents referred to in section (3) of this rule by each unique service territory.

(5) Commission staff and interested persons may file written comments on each ESS's Emissions Planning Report within 45 calendar days of the filing. The ESS may file a written response to any comments within 30 calendar days thereafter. After considering written comments, the Commission may decide to commence an investigation, begin a proceeding, or take other action as necessary to make a determination regarding Oregon Laws 2021, Chapter 508, Section 5 requirement for continual and reasonable progress toward compliance with the clean energy targets set forth in Oregon Laws 2021, Chapter 508, Section 3.

(6) Upon conclusion of the Commission review of the report in section (3) of this rule, the Commission will issue a decision to acknowledge the ESS's Emissions Planning Report if it demonstrates continual and reasonable progress toward compliance with state clean energy targets. If the Commission determines the Emissions Planning Report does not demonstrate continual and reasonable compliance, the ESS must file an updated Emissions Planning Report that addresses the Commission's concerns within 90 days.

(7) The ESS must post a non-confidential version of the Emissions Planning Report on its website within 30 days of the Commission decision whether to accept the report. The ESS must also provide information about its compliance report to its customers by bill insert or other Commission-approved method.

(8) Availability of Information:

(a) Information regarding an analysis of the \$/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for each of the next 3 years, as required by section 3(f) of this rule will be available for review only by Qualified Statutory Parties, meaning any Commission Staff and any representatives of the Citizen's Utility Board, who executed a modified protective order.

(b) The following information shall be available for review only by Non-Market Participants that have executed a modified protective order:

(A) Action plan that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology, as required in Section 3(e) of this rule;

(B) Information regarding the load forecast for each of the following three consecutive years, aggregate for all Oregon Direct Access customers, as required by Section 3(c) of this rule; and

(C) The summary of the specific electricity-generating resources and MWh generation from those resources, as required by Section 3(b) of this rule.

(c) For purposes of this rule, Non-Market Participants includes Commission Staff, the Citizen's Utility Board, and non-profit organizations engaged in environmental advocacy that do not otherwise participate in electricity markets.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.600-757.667

AMEND: 860-038-0590

RULE TITLE: Transmission and Distribution Access

RULE SUMMARY: This rule is amended to provide a necessary exception from section (3) in the event that the preferential curtailment rules in OAR 860-038-0290 are applied and to make housekeeping changes.

RULE TEXT:

(1) An electric company may be relieved of some or all of the requirements of this rule by placing its transmission facilities under the control of a regional transmission organization consistent with FERC Order No. 2000 and obtaining Commission approval of an exemption.

(2) An ESS may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs. The electric company must coordinate the filings of these tariffs to ensure that all retail and direct access consumers are offered comparable services at comparable prices.

(3) Except as otherwise directed by OAR 860-038-0290, each electric company must provide nondiscriminatory access to transmission, distribution, and ancillary services, including transmission into import-limited areas and local generation resources within import-limited areas, to serve all retail consumers. An electric company may not give preference or priority in transmission and distribution pricing, transmission and distribution access, or access to, pricing of, or provision of ancillary services and local generation resources, to itself or its affiliate relative to persons or entities requesting transmission or distribution access to serve direct access consumers. No preference or priority may be given to, nor any different obligation assigned to, any consumer based solely on whether the consumer is purchasing service from an electric company or an ESS.

(a) Any transmission or distribution capacity to which an electric company has entitlements, by ownership or by contract, for the purpose of serving its Oregon load must be made available to an electric company and ESSs that are serving such load on at least a pro rata basis. An electric company must describe in its tariff filings how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if:

(A) Access to the electric company's transmission or distribution facilities or entitlements is restricted by contract or by regulatory obligations in other jurisdictions; or

(B) If providing transmission or distribution service on a pro rata basis would result in stranding generating capacity owned or provided through contract by the electric company;

(b) Except for those ancillary services required by FERC to be purchased from an electric company, an ESS may acquire, on behalf of the retail loads for which it is responsible, all ancillary services required relative to the transmission of electricity by any combination of:

(A) Purchases under the electric company's Open Access Transmission Tariff;

(B) Self-provision; or

(C) Purchases from a third party;

(c) Energy imbalance obligations, including the pricing of imbalances and penalties for imbalances, must be developed to reasonably minimize imbalances and to meet the needs of the direct access market environment. The electric company must address such energy imbalance obligations in its proposed FERC tariffs. Energy imbalance obligations imposed upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, must comply with the following:

(A) The obligations impose substantively comparable burdens upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, and may not unreasonably differentiate between consumers that are entitled to direct access on the basis of customer class, provider of the service, or type of access;

(B) The obligations recognize the practical scheduling and operational limitations associated with serving retail consumer loads in the direct access environment, but require ESSs, including the entity serving the standard offer load, to make reasonable efforts to minimize their energy imbalances on an hourly basis;

(C) The obligations be designed with the objective of deterring ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company from burdening electric system operation or gaining economic advantage by under-scheduling, over-scheduling, under-generating or over-generating. The obligations may not be punitive in nature; and

(D) The obligations enable an electric company and ESSs, including the entity serving the standard offer load, to settle for energy imbalance obligations on a financial basis, unless otherwise mutually agreed to by the parties.

(d) Where local generation is required to operate for electric system security or where there is insufficient transmission import capability to serve retail loads without the use of local generation, the electric company must make services available from such local generation under its ownership or control to ESSs consistent with the electric company's provision of services to standard offer consumers, residential consumers, and other retail consumers. The electric company must also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;

(e) The electric company's tariffs must specify prices, terms, and conditions for scheduling, billing, and settlement. Other functions may be specified as needed;

(f) An electric company's tariffs must include a dispute resolution process to resolve issues between the electric company and the ESSs that serve the retail load of an electric company in a timely manner. Such processes must provide that unresolved disputes related to such retail access matters may be appealed to the Commission.

(4) If adherence to this rule requires FERC approval of tariff or contract provisions, the electric company must petition FERC for the approval of the tariff or contract provisions in a timely manner.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.600 - 757.667

AMEND: 860-038-0740

RULE TITLE: New Large Load Program Enrollment and Rates

RULE SUMMARY: This rule is amended to become consistent with the rules regarding non-bypassable charges in OAR 860-038-0170.

RULE TEXT:

(1) Each New Large Load consumer must notify the electric company of its intent to enroll in the New Large Load Direct Access Program and opt out of cost-of-service rates at the earlier of either:

(a) A binding written agreement with the utility for eligible new load, or

(b) One year prior to the expected starting date of the incremental load.

(2) Section (1) of this rule is waived for the eligible New Large Load consumer that has entered into a written agreement with an electric company prior to September 30, 2018, indicating its intent to receive distribution service from an electric company and for which the electric company has not planned to provide generation supply service.

(3) An electric company must charge New Large Load Direct Access participants a New Large Load Direct Access Service Transition Rate that recovers the following:

(a) 20 percent of the fixed generation costs for five years; and

(b) All reasonable costs of administering the New Large Load Direct Access Program.

(4) Participants receiving service under the New Large Load Direct Access program must also pay an Existing Load Shortage Transition Adjustment on the sum of the Existing Load Shortage for the participant and the Existing Load Shortage of all of the participant's affiliated consumers.

(a) For purposes of this rule, "affiliated consumer" means a consumer, a controlling interest which is held by another consumer, engaged in the same line of business as the holder of the controlling interest.

(b) For the purposes of this rule, "Existing Load Shortage" means the larger of zero or a consumer's Average Historic Cost-of-Service Load plus Incremental Demand Side Management less the average Cost-of-Service Eligible Load during the previous 60 months.

(c) The Existing Load Shortage Transition Adjustment is a charge or credit equal to:

(A) 75 percent of fixed generation costs plus net variable power cost transition adjustments during the first five years after enrollment in the New Large Load Direct Access Program; and

(B) 100 percent of fixed generation costs plus net variable power cost transition adjustments after the first five years of enrollment in the New Large Load Direct Access program.

(5) A participant may be exempted from charges made under section (4) of this rule if the participant can demonstrate that the change in load in question is not due to load shifting activity. For purposes of this rule, “load shifting” means the relocation of facilities, equipment, processes, manufacturing, employees or any economic activity for the deliberate purpose of increasing load at locations participating in the New Large Load Direct Access Program from locations not subject to the New Large Load Direct Access Program. The electric company tariff must include provisions detailing procedures and requirements for a participant to make this demonstration.

(6) A participant must also pay non-bypassable charges, in accordance with OAR 860-038-0170.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 757.600 - 757.667, ORS 756.040