

ORDER NO. 24-165

ENTERED May 31 2024

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2024

In the Matter of

ALLIANCE OF WESTERN ENERGY  
CONSUMERS,

Petition for Investigation Into Long-Term  
Direct Access Programs.

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on May 28, 2024, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



**Nolan Moser**

Chief Administrative Law Judge



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

ITEM NO. CA7

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 28, 2024**

REGULAR \_\_\_\_\_ CONSENT  X  EFFECTIVE DATE  May 29, 2024

DATE: May 20, 2024

TO: Public Utility Commission

FROM: Madison Bolton

THROUGH: Caroline Moore and Scott Gibbens **SIGNED**

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. UM 2024)  
Request for waiver of Oregon Administrative Rule 860-038-0290(1) until the conclusion of the Direct Access investigation in Docket No. UM 2024.

**STAFF RECOMMENDATION:**

Temporarily waive the effective date of June 1, 2024, in Oregon Administrative Rule (OAR) 860-038-0290(1) until 90 days after the Commission issues its Order for the contested case in Docket No. UM 2024: AWEC's Investigation into Long-Term Direct Access (DA) Programs.

**DISCUSSION:**

Issue

Whether the Oregon Public Utility Commission (OPUC or Commission) should find that there is good cause to temporarily waive the effective date for OAR 860-038-0290 set forth in OAR 860-038-0290(1) until 90 days after the conclusion of the contested case in Docket No. UM 2024.

Applicable Law

OAR Chapter 860, Division 038 contains Oregon's Direct Access regulation and applies to electric companies and electricity service suppliers (ESS) in the state of Oregon.

In Order No. 23-305, the Commission adopted OAR 860-038-0290 rules for preferential curtailment for New Large Load Direct Access Program participants and long-term opt-

out direct access customers. Pursuant to OAR 860-038-0290(1), the rules become effective June 1, 2024.

OAR 860-038-0001(4) states that the Commission may waive any of the Division 038 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

### Analysis

#### *Background*

Prior to the ongoing contested case in Docket No. UM 2024, the Commission directed Staff to conduct a rulemaking in Docket No. AR 651. Among other things, the rulemaking added regulation for a preferential curtailment option for DA customers. The rules that establish preferential curtailment and describe its implementation have an effective date of June 1, 2024.

When drafting these rules, Staff and stakeholders expected the contested case portion of UM 2024 would be complete prior to June 2024. Given that the investigation in UM 2024 is still ongoing, a June 1 effective date would force DA customers to make decisions about their curtailment status before crucial operational questions are resolved in the contested case. Additionally, the electric companies that are subject to OAR 860-038-0290 must design tariffs to implement the preferential curtailment option, which requires decisions on issues within the scope of UM 2024.

#### *Staff Recommendation*

Staff finds there is good cause for temporarily waiving the June 1, 2024, effective date for the following reasons:

#### **Operational details have not been fully determined.**

Key details for implementing a preferential curtailment option still need to be determined in UM 2024, such as:

- The timeline for cost estimates and installation of infrastructure to enable curtailment.
- The frequency with which a customer is allowed to switch between being curtailable or non-curtailable.
- The size (in megawatts or other metric) for a DA customer load to participate in preferential curtailment.
- The electric company's liability when making curtailment decisions.
- Whether a cap on the number of curtailable DA customers should exist.

#### **DA customers would have to make curtailment elections prematurely.**

If the rules in OAR 860-038-0290 become effective June 1, 2024, any new DA customers would be required to decide whether they will be curtailable or non-curtailable during the next annual election window. DA customers would not be able to

make an informed decision given that details around costs, load size, and utility liability have not been resolved. Additionally, there has not been a chance to design tariffs outlining the terms of preferential curtailment service. Staff recommends that the rules in OAR 860-038-0290 become effective 90 days after the conclusion of the contested case in UM 2024 to account for the necessary time to design and approve tariffs.

### Conclusion

Due to the timing and operational hurdles described in this report, Staff recommends the Commission find that there is good cause to temporarily waive the effective date for OAR 860-038-0290 set forth in OAR 860-038-0290(1) until 90 days after the conclusion of the contested case in Docket No. UM 2024.

### **PROPOSED COMMISSION MOTION:**

Temporarily waive the effective date of June 1, 2024, for OAR 860-038-0290, as set forth in OAR 860-038-0290(1), until 90 days after the Commission issues its Order concluding the contested case in UM 2024: AWEC's Investigation into Long-Term Direct Access Programs.

UM 2024