

threshold of 10 average megawatts (“aMW”) that could be implemented swiftly, to be followed by additional rules that may be applicable to NLDA for customers at lower thresholds. The level of 10 aMW was selected because it was the absolute highest level proposed by any party, and significantly above the level of load for which the utilities plan. The level was not a compromise among positions espoused by various parties, nor based on fact, but rather simply the adoption of a threshold so high that no party could oppose it, for the sole purpose of facilitating at least some level of movement in this docket.

As NIPPC has noted in prior comments, a 10 aMW threshold is so high that, standing alone, it would be akin to almost completely rejecting the NLDA program altogether. As data provided by the utilities (included as Attachments 1 and 2) indicates, there has been just a single load of that size requesting service from either utility, and only a handful of new loads of any significant size in recent years. From 2013-2017, PacifiCorp has not had a single request for new load between 1 and 10 MW, and has had just one request at a 10 MW peak level, but no requests for service at a 10 aMW level. From 2012-2017, Portland General has had 5 requests at a level between 1 and 5 aMW, one request for service by a new large customer at a level between 5 – 10 aMW, and one request for service at a level over 10 aMW. While it is possible that these numbers may grow with the adoption of an NLDA program, the fact remains that new loads at or above the 10 aMW level are exceedingly rare, if they occur at all.

As a matter of expediency, NIPPC supports a phased approach for initially creating regulations applicable to NLDA at the 10 aMW threshold,² and subsequently creating regulations applicable below that threshold, with two caveats:

- (a) The “bright line” 10 aMW threshold was selected in large part because it is above any level planned for by the utilities, meaning a rule could move forward without the need to address some of the more complex issues. As addressed in Section 2 below, the Proposed Rule contains draft regulations that are not appropriate for this threshold level.
- (b) To the extent the Proposed Rules are adopted, they should not be the starting point or create precedent for regulations applicable to NDLA loads that are smaller than the 10 aMW size. The point of the phased approach is expedition on a simplified scope. NIPPC supports getting “something” done at an early stage to provide a message to the market that Oregon may soon be open for business and to potentially capture a customer or two

² NIPPC submits that a the 10 aMW threshold is too high, and that the first phase of this rulemaking should be based on a threshold of no higher than 5 aMW, based on existing data and information.

over the next few years. However, the regulations approved for this initial phase will not be appropriate for the next phase of the proceeding.

2. **Changes to Draft Rules Required for High Threshold New Load Direct Access**

a. **No Transition Charges Are Appropriate For The 10 aMW Threshold.**

Section 860-038-0720 (1)(a) of the Proposed Rule contemplates that utilities must charge a transition rate equal to 25 percent of “fixed generation costs” for five years. This is not appropriate for the 10 aMW threshold.

The major issue in this proceeding is whether transition charges should be applicable for new load when the utility has neither planned for the load nor incurred costs to provide service to such load. A number of parties to this proceeding have recommended that load at levels of 1 aMW or below should not be subject to transition charges if the utility has adequate notice and/or has not planned for that load and incurred costs in expectation of providing service. NIPPC acknowledges that there are open questions about the utilities’ specific planning with respect to lower thresholds, and there is a potential that utilities may incur some costs consistent with such plans. ***However, all parties concur that the utilities do not plan for new load at a threshold above 10 aMW.*** Given that the utilities do not plan for this load, there is no basis for imposing a transition cost. The Commissioners should direct Staff to remove this requirement from the Draft Rules.

Even if a basis existed to apply transition charges in situations where the utility has not planned for load, the seemingly random selection of a charge equal to “25% of fixed generation costs” is unsupported. Selecting a fee at this level, without any tie to actual or even theoretical costs and/or cost shifts, would amount to an arbitrary and capricious decision and cannot be sustained.

Imposition of transition charges at this threshold level is inconsistent with the Direct Access statutes. Oregon’s Direct Access statute only allows imposition of transition charges for recovery of “Uneconomic Utility Investment.”³ Uneconomic Utility Investment, in turn, is expressly defined in Oregon’s Direct Access statute, and only apply to *previously incurred costs*

³ 757.600 (31).

and otherwise unrecoverable investments made by the utility.⁴ Given the utilities do not plan for, or incur costs to provide service for, new load at the 10 aMW threshold level, no uneconomic utility investment should ever result. Moreover, setting a mandatory level of transition charges with no basis in fact, nor reflecting any actual costs that may be incurred, inappropriately shifts costs to new customers, and is inconsistent with the Commission’s statutory obligation to remove obstacles to the development of a competitive market.⁵

NIPPC requests that the Commission direct Staff to adopt rules that impose no transition charges on new loads of 10 aMW and above, consistent with its statutory obligations. Should the Commission nonetheless direct Staff to include some level of transition costs for NLDA at the 10 aMW threshold, any Order issued by the Commission should explain, in detail, the rationale for selection of the charge, how such charge relates to cost incurrence and cost responsibility principles, how such charge meets the Commission’s mandate to eliminate barriers to the development of a competitive retail market, and how such charge prevents cost shifting from NLDA customers to existing customers.

b. The Commission Should Adopt a “Safe Harbor” Approach With Opportunity For Customers to Demonstrate Eligibility.

NIPPC appreciates the goal of getting the NLDA program operating on a limited basis for a very high threshold in the near term, pending further development on terms applicable to lower thresholds. As noted above, all parties agree that the utilities do not plan for new load above 10 aMW, so no level of transition charges would be appropriate. All parties also agree that, with sufficient advance notice, a utility can adjust its planning to ensure it does not incur costs for new load regardless of the size of such load – it is the amount of notice, and size of load, that are still, open for discussion.

Whatever thresholds are ultimately adopted, the Commission should make it clear that they are “safe harbor” provisions that guarantee eligibility for New Load Direct Access

⁴ 757.600 (35)

⁵ See 2017 ORS 757.646 (1): “The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive. The commission may require an electric company acting as an electricity service supplier do so through an affiliate.”

treatment. At the same time, the Commission should allow for customers not meeting a given term of the safe harbor requirements to petition the Commission for large New Load Direct Access treatment. For example, to the extent a prospective large new load may only be anticipated to be 8 aMW, rather than 10 aMW, but is able to provide (for example) four years' advance notice, it should be eligible to petition the Commission for large NLDA treatment, and should be awarded large NLDA status unless the utility can affirmatively demonstrate that it has incurred costs in anticipation of such load. A similar process is already in place in a variety of jurisdictions.

c. The “Rate Adder” proposed in 860-038-0740(3) is unsupported.

Section 860-038-0740(3) of the Proposed Regulations provides that, if a given large NLDA customer's return to cost of service increases the existing cost of service rate by more than one-tenth of one percent in any given year, the customer must pay a rate adder to mitigate such impact. There is no basis for such rate adder, given that a utility will have three years notice that a customer is returning to service. As noted above, there is no basis to charge a large NLDA customer a transition charge given the utility does not plan for such load. To the extent the Commission nonetheless requires some level of transition charge, the NLDA customer will be subsidizing cost of service ratepayers, and payments made under that charge already compensate the utility and its rate of return customers for costs upon return to service, if any. Neither charge is appropriate; but including both a transition charge and a rate adder return charge to cover the same perceived phantom risk is not appropriate.

d. The Commission Should Reduce and Clarify the Notice Period

The Draft Rules specify that, for new load to be eligible for the NLDA Program, the customer must make a binding election at the earlier of either (i) one year prior to energizing the meter or (ii) the date of a binding written agreement with the utility to receive distribution services for eligible new load. NIPPC submits that one year prior to energizing the meter is unnecessarily long. Whatever term the Commission ultimately adopts, it should make clear that the timeframe is intended to track the date the customer starts full-scale operation at the site, and does not apply to test power, power used during facility construction, or similar power use not directly intended to be the new large load.

3. Conclusion

NIPPC encourages the Commission to swiftly move forward with the establishment of regulations for the NLDA program consistent with the comments above.

Respectfully submitted,

June 18, 2018

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/s/Carl Fink/

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Of Attorneys for the Northwest and
Intermountain Power Producers Coalition

ATTACHMENT 1

Portland General Electric Data Response – New Large Customers by Year

Portland General Electric
 New Large Customers by Year

	AVG_2_HI 1-5 MW*	AVG_2_HI 5-10 MW*	AVG_2_HI Over 10 MW*	MWa 1-5 MWa*	MWa 5-10 MWa*	MWa Over 10 MWa*
2012	1	1	1	2		1
2013	4	1			1	
2014	1					
2015	9	1		3		
2016						
2017	3					

* Categorization based on customer deliveries data in 2017

ATTACHMENT 2

PacifiCorp Data Response – New Large Customers by Year

DAVIS Diane

From: KAUFMAN Lance
Sent: Thursday, January 18, 2018 9:12 AM
To: MOSER Sommer; DAVIS Diane
Subject: FW: UM 1837

Follow Up Flag: Follow up
Flag Status: Flagged

This one is pretty easy to summarize, I don't think sending the email adds info.

From: Siores, Natasha [mailto:Natasha.Siores@pacificorp.com]
Sent: Monday, December 18, 2017 11:42 AM
To: KAUFMAN Lance <ldkaufma@puc.state.or.us>
Subject: RE: UM 1837

Hi Lance,

Our folks put together the following. Please let me know if you need anything else. See you in this afternoon's workshop.

The following table lists the number of new customers in Oregon for each calendar year with a peak demand for the thresholds requested.

	1-5 MW	5-10 MW	over 10 MW
2013			
2014			
2015			1
2016			
2017			

From: KAUFMAN Lance [mailto:lance.kaufman@state.or.us]
Sent: Tuesday, December 12, 2017 9:48 AM
To: Siores, Natasha <Natasha.Siores@pacificorp.com>
Subject: [INTERNET] RE: UM 1837

**** STOP. THINK. External Email ****

Sorry, the last category should be "Over 10 MW" not "10 MW".

From: KAUFMAN Lance
Sent: Tuesday, December 12, 2017 9:45 AM
To: 'Siores, Natasha' <Natasha.Siores@pacificorp.com>
Subject: UM 1837

ATTACHMENT 3

Recommended Changes to Proposed Regulations With Commentary

AR 614 May 22 Public Meeting Memo Attachment 1
[NIPPC JUNE 18, 2018 COMMENTS IN REDLINE]

New large load Direct Access Program Rules (section of Division 38 rules)

860-038-0700

Definitions for New Large Load Direct Access Program

(1) Unless otherwise defined in section (2), the definitions set forth in OAR 860-038-0005 are applicable to New Large Load Direct Access Programs.

(2) As used in the New Large Load Direct Access Program rules:

(a) "Affiliated Consumer" means a consumer, ~~five-fifty~~ percent or more of the voting shares of which are held by another consumer engaged in the same business line.

(b) "Cost of Service Eligible Load" means the load of a consumer that is eligible for a cost of service rate.

(c) "~~Cost-of-Service~~ Existing Site" means a Site that receives or has received energy in the last 5 years that is eligible for a cost of service rate.

(d) "Existing Consumer" means a consumer that is or has been a cost-of-service consumer of an electric company within the prior five calendar year period.

(e) "Existing Load Shortage" means the larger of zero or a consumer's Historic Cost of Service Load ~~plus Incremental Demand Side Management~~ less the average Cost of Service Eligible Load during the previous 12 months.

(f) "Existing Load Shortage Transition Adjustment" means a charge or credit equal to:

(A) ~~75 percent of fixed-generation costs plus net variable power cost~~ the transition charges that otherwise would apply for electing 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;~~

(g) "Average Historic Cost of Service Load" means the highest average Cost of Service Eligible load during any ~~12-month period from the present to~~ five years prior to a consumer requesting participation in the New Large Load Direct Access Program.

~~(h) "Incremental Demand Side Management" Means the effective net impact of energy efficiency measures and demand response implemented at a facility after a consumer gives binding notice of participation in the New Large Load Direct Access Program.~~

Commented [A1]: The proposed "Existing Load Shortage Transition Adjustment" is intended to prevent gaming by a customer purposely shifting load from a cost of service facility to an NLDA facility. Such gamesmanship only could occur if the entities were in identical businesses. For example, even if affiliated, reduction in power use by a cement plant would have nothing to do with an increase in power use under NLDA by a new wood products plant.

Commented [A2]: NIPPC supports Staff's proposed change.

Commented [A3]: NIPPC supports Staff's proposed change

Commented [A4]: As noted in NIPPC's May 21 Comments, and further addressed below, transition costs applicable to direct access – new load or the existing program – are limited by statute and intended to prevent cost-shifting either from the direct access customer to the cost of service customer or from the cost of service customer to the direct access customer. To the extent an existing load shortage transition adjustment is appropriate at all, it must be based on the applicable transition charges that would otherwise apply had that load selected direct access.

Commented [A5]: NIPPC does not believe any existing load adjustment is appropriate after the first 5 years. Under no circumstances should it continue in perpetuity.

Commented [A6]: As noted in AWEC's May 21 2018 initial comments, the average load is necessary to account for normal usage variations throughout the year.

Commented [A7]: NIPPC supports Staff's proposed change, with clarification.

Commented [A8]: NIPPC supports Staff's proposed change

(h)(i) "New Large Load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility, which:

(A) Has never been contracted for or committed to in writing by a cost-of-service consumer with an electric company; and

(B) ~~Will be expected to result in an increase in power requirements of a consumer by the New Large Load Threshold of ten average megawatts or more in any consecutive 12-month period during the second and third years after new operations begin period.~~

(i) "New Large Load Direct Access Program" means a direct access program offering by an electric utility that meets the requirements set forth in the New Large Load Direct Access Program section of the Division 38 rules.

(j) "New Large Load Direct Access Service Transition Rate" means a rate that is applied to load served under the New Large Load Direct Access Program.

~~(k) New Large Load Threshold shall be of ten average megawatts or more in any consecutive 12-month period or such lower threshold as approved by the Commission.~~

Commented [A9]: See new definition (k). This definition is necessary to facilitate waivers or petitions that may be granted under the program, and will facilitate future regulatory changes as may be needed.

Commented [A10]: NIPPC supports Staff's proposed change

860-038-0710

Requirement to Offer a New Load Direct Access Program

An electric company ~~that offers direct access service~~ must offer a New Load Direct Access Program to New Large Load cost-of-service consumers, subject to the requirements set forth in this New Large Load Direct Access Program section of the Division 38 rules.

Commented [A11]: NIPPC supports Staff's proposed change

860-038-0720

Transition Rates

(1) In addition to all other charges applicable to a New Large Load, an electric company must charge applicable New Large Load consumers a New Large Load Direct Access Service Transition Rate that recovers the following:

~~(a) 25 percent of the fixed generation costs for five years; and~~

~~(b)(a) All prudent costs of administering the New Load Direct Access Program to the extent such costs exceed the administrative costs the electric company would incur to serve the same load under cost of service generation rates.~~

Commented [A12]: As set forth in NIPPC's May 21, 2018 comments, there is no basis for charging transition costs at the 10 aMW level given that the utilities have not incurred costs of any kind to serve such load.

Commented [A13]: NIPPC supports Staff's proposed change.

(2) Consumers 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 consumer and the Existing Load Shortage of all of the consumer's Affiliated Consumers ~~if the Affiliated Consumer is engaged in the same line of business as the Consumer and the Consumer has a controlling interest in the Affiliated Consumer.~~ ~~This Adjustment is calculated and billed for on a monthly basis by scaling the Existing Load Shortage into a daily amount, and multiplying by the number of days in the consumer's billing cycle.~~

Commented [A14]: See prior comment on definition of Affiliated Consumer.

Commented [A15]: NIPPC supports Staff's proposed change.

860-038-0730

New Large Load Eligibility Requirements

(1) ~~Only~~ New Large Loads that meet the following requirements are eligible to participate in the New Large Load Direct Access Program:

(a) Load must be separately metered ~~unless the consumer can demonstrate an alternative means of measuring the New Large Load with comparable accuracy.~~

Commented [A16]: As described in prior comments, the 10 aMW threshold should be treated as a "bright line" safe harbor provision guaranteeing new load eligibility, but customers should have the opportunity to petition the commission for inclusion in the program.

(b) For New Large Loads, the load must be incremental to the Historic Cost of Service Load at that Site.

Commented [A17]: NIPPC supports Staff's proposed change.

(c) Load must have opted out of cost-of-service rates.

(d) 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 to receive distribution service for eligible new load, or

(B) One year prior to ~~energizing the meter~~ ~~the expected starting date of the incremental new load.~~

Commented [A18]: NIPPC supports Staff's proposed change

(2) Subsection (l)(c) is waived for eligible New Large Load that has entered into a written agreement with an electric company prior to August 31, 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)~~ (3) If the actual load of a facility served under the New Large Load Direct Access Program is less

than ~~ten average megawatts~~the New Large Load Threshold per year in both the second ~~or and~~ third year of receiving service and the shortfall in load is not attributable to equipment failure, energy efficiency, load curtailment or load control, or other causes outside the control of the New Large Load Direct Access Program consumer, the consumer must be enrolled in ~~the general cost-of-service opt-out program~~any direct access program of the consumer's choice in the following direct access enrollment window. ~~The electric company must petition the Commission to subject the consumer to this provision, and the consumer will be provided an opportunity to demonstrate its reduction in load to less than ten average megawatts was the result of equipment failure, energy efficiency, load curtailment or load control, or other causes outside the control of the New Large Load Direct Access Program consumer.~~

Commented [A19]: NIPPC supports Calpine's on May 23, 2018 Comments explaining these proposed changes

Commented [A20]: NIPPC supports Staff's proposed change.

~~(3)~~(4) New load that does not meet all eligibility criteria set forth above may petition the Commission for eligibility in the New Large Load Direct Access Program by providing a rebuttable presumption that the utility has not planned for or incurred costs to serve its load.

Commented [A21]: As more fully described in NIPPCs prior comments, the Commission should allow for customers not meeting a given term of the bright line safe harbor provisions to petition the Commission for New Load Direct Access treatment. For example, to the extent a prospective new load may only be anticipated to be 8 aMW, rather than 10 aMW, but is able to provide (for example) four years' advance notice, it should be eligible to petition the Commission for NLDA treatment, and should be awarded NLDA status unless the utility can affirmatively demonstrate that it has incurred costs in anticipation of such load. A similar process is already in place in a variety of jurisdictions.

860-038-0740

Nonresidential Standard Offer, Default Supply and Return to Cost of Service

(1) New Large Load Direct Access Program consumers are subject to the requirements set forth in OAR 860-038-0250 and OAR 860-038-0280, except as set forth in section (3).

(2) New Large Load Direct Access Program consumer may return to cost of service rates under the same rates and terms of service as the electric company's current cost of service opt-out offers, ~~except as set forth in section (3).~~

~~(3) If the New Large Load Direct Access Program consumer's rates under OAR 860-038-0250, OAR 860-025-0280 or return to a cost of service rate results in an increase to existing cost of service rates of more than one-tenth of one percent within any one year, the electric company must charge the current or former New Load Direct Access consumer a rate adder is appropriate to mitigate the rate impact to cost-of-service rates.~~

Commented [A22]: There is no basis for this charge, as returning customers will provide adequate notice to the utilities to allow adjustment of generation portfolios. To the extent NLDA customers pay any transition costs at all, such payment would be a subsidy to existing customers and charging an additional, after-the-fact charge would be double-collection.

860-038-0750

New Large Load Direct Access Program Caps

(1) The total annual load of New Large Load ~~and Affiliated New Large Single Load~~ may not exceed 12 percent of the electric company's weather normalized annual load in calendar year 2017.

(2) Section (1) of this rule sunsets following the fifth calendar year that the New Large Load Direct Access Program has been in place.

(3) Each electric company must file a status report to the Commission within two months of total enrollment in New Large Load Direct Access Programs reaching 25 MWa, 50 MWa, 100 MWa and 80 percent of the enrolment limit.

Commented [A23]: NIPPC supports Staff's proposed change

860-038-0760 -Jurisdictional Allocations

For an electric company with service territory outside of Oregon, jurisdictional allocation of transmission costs and generation costs may not be affected by New Large Load Direct Access Program participants.