

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 358**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC COMPANY	)	OPENING BRIEF OF NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION
	)	
Advice No. 19-02 New Load Direct Access	)	
_____	)	

Pursuant to the procedural schedule adopted by the Commission in this Docket, the Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) submits its opening brief on Portland General Electric Company’s (“**PGE**”)’s proposed tariff filing to implement its Large New Load Direct Access (“**Large NLDA**”) program.

The fundamental question before the Commission in this matter is whether PGE must be required to implement a Large NLDA program that meets the Commission’s current laws and policies on a timely basis, or whether PGE can delay implementation of this important program for months or years to come while parties wrestle with topics that fall beyond the scope of this proceeding and are already docketed to be addressed elsewhere. Legislative intent and the Commission’s own statements make it clear that the NLDA program – and particularly the Large NLDA program -- is intended to be established on an expedited basis, and the facts demonstrate that continued delay in program implementation is causing current harm to the market. Despite these facts, more than a year after the Commission promulgated rules requiring utilities to offer a Large NLDA service,<sup>1</sup> and more than eight months after Pacific Power was able to put its Large NLDA program into effect,<sup>2</sup> PGE still does not have an approved tariff on file. The Commission should reject PGE’s clear attempt to delay implementation of the Large NLDA program, and order PGE to make a compliance filing that does not include PGE’s proposed Resource

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<sup>1</sup> See *In Re Rulemaking Related to New Large Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 at 1 (Sept. 14, 2018), (promulgating OAR 860-038-0700 to 860-038-0760).

<sup>2</sup> PacifiCorp’s NLDA program was unopposed and was approved by the Commission on February 26, 2019 (Docket No. ADV 900, Advice No. 18-010).

Adequacy Charge (“**RAD**”) or Resource Intermittency Charge (“**RIC**”) charges – charges to cover perceived concerns that PGE acknowledges it is not permitted to consider in its planning under current Commission regulations, and which are being addressed in other dockets. The Commission also should reject PGE’s proposal that it can include as a “standard” offer its proposed “Long-Term Market Energy Option,” which appears to be nothing more than an attempt to skirt Commission requirements and offer service to customers under individually negotiated arrangements.

## I EXECUTIVE SUMMARY:

This brief addresses the following issues:

*First*, the brief provides some necessary context and background to this proceeding. This includes reiterating fundamental legal principals embedded in Oregon Law governing the direct access programs, such as the Commission’s affirmative statutory obligation to eliminate barriers to the development of competitive retail market structures as dictated by SB 1149 (2011).<sup>3</sup> This background also reiterates the legislative and regulatory history leading up to approval of the Large NLDA program, including the fact that implementation of the Large NLDA program was intended to be done on an expedited basis.

*Second*, this brief demonstrates that PGE’s proposals to impose new, costly, and unspecified charges on the Large NLDA program to cover resource adequacy and resource intermittency are not appropriate for this docket, and appear to be nothing more than attempts to delay or disrupt competition in a manner contrary to state law and Commission policy. While parties recognize that resource adequacy issues may be a topic that merits further consideration, such consideration must be undertaken in a generic docket such as UM 2024, which is already underway. No resource adequacy issues require immediate action by the Commission, and the Commission has already included in the Large NLDA program both express program caps and transition charges that limit resource adequacy concerns.

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<sup>3</sup> See 2019 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.”

*Third*, this brief addresses PGE’s proposal that it be permitted to enter into individually-negotiated agreements as a “standard” offer.

## II. ARGUMENT

### 1. **The Commission Must Expedite Approval of PGE’s Large New Load Direct Access Program.**

The Commission’s obligation to ensure a workable Large NLDA program is grounded in the Commission’s statutory obligation to eliminate barriers to the development of a competitive retail market and mitigate the vertical and horizontal market power of incumbent electric companies, as well as the Commission’s express determinations that implementation of the Large NLDA programs be expedited. Under Oregon law:

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.

2017 ORS 757.646(1). The basis behind the statute is laid out in the preamble to Senate Bill 1149, which could not be more clear:

**Whereas** the continued competitiveness of the state’s economy requires that the Legislative Assembly consider national trends toward electric deregulation; and

**Whereas** the divestiture or functional separation of electrical power generation from the distribution functions is the most effective means of stimulating competition, providing depth and liquidity to the wholesale market and facilitating the transition to a competitive market by alleviating horizontal and vertical monopoly market power and providing a more accurate estimation and mitigation of stranded costs; and

**Whereas** price and service unbundling is the best way to identify the costs associated with generation, transmission and distribution of electricity services and is essential to the development of a competitive market; and

**Whereas** restructuring of the electricity industry must be crafted in a way that retains the benefits of low-cost resources for consumers; and

**Whereas** all Oregon retail electricity consumers should be provided fair, non-discriminatory access to competitive electricity options; and

**Whereas** retail electricity consumers that want and have the technical capability should be allowed, either on their own or through aggregation, to take advantage of competitive electricity markets *as soon as is practicable*; and

**Whereas** this state must adopt reasonable transition policies, including a portfolio access option and public purpose funding, that lead to a competitive electricity market that is accessible to and benefits all classes of electricity consumers; and

**Whereas** this state must adopt adequate electricity consumer protections [.]

*See* Preamble, Senate Bill 1149, Or Laws 1999, ch 865, compiled, as subsequently amended, at ORS 757.600-757.691. Any decisions in this docket must be considered within the framework of the Commission’s statutory obligations. In this case, PGE is proposing to impose unsupported RIC and RAD charges that would be *clear* barriers to the development of a competitive retail market structure,<sup>4</sup> and would impermissibly further PGE’s monopoly status by requiring all Large NLDA customers to acquire resource adequacy solely from the utility.

It is also important to recall the history of the new load direct access program thus far, including the Commission’s expressed intent to ensure that the program would be placed into service on an *expedited* basis. The Commission’s development of a new load direct access program stems from legislative consideration of SB 979 (2017), which would have completely eliminated transition charges for new load direct access. Senator Lee Beyer, then Chair of the Senate Business and Transportation Committee, determined – after speaking with Commission Staff and then-Commission Chair Lisa Hardie – that the Commission should be afforded the opportunity to develop appropriate regulations before the legislature moved to implementing

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<sup>4</sup> According to PGE’s preliminary estimate, the RAD charge alone could cost as much as \$9.00/kW-month. PGE Advice Filing No. 19-02, p. 7.

new legislation on this issue.<sup>5</sup> The Commission opened a docket to consider new load direct access in the wake of the legislative discussion in SB 979, culminating in the rules adopted in docket AR 614<sup>6</sup> and promulgated as OARs 860-038-700 to 760. In doing so, the Commission has acknowledged virtually every step of the way that approval of the program was intended to be expedited.<sup>7</sup> Indeed, the Commission phased consideration of the NLDA program to address Large NLDA separately from smaller new load direct access expressly in order to allow parties to move forward with at least a portion of the program swiftly, leaving consideration of some of the more complex issues to a subsequent docket that has yet to be initiated. That was well more than a year ago.<sup>8</sup> As noted in Commission Staff testimony, “customers are already waiting in a queue, which was the result of the Commission’s decision in ADV 919, which was preceded by

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<sup>5</sup> In the Senate Business and Transportation work session regarding Senate Bill 979, which would have eliminated transition charges for new load that purchased renewable direct access, Committee Chair Senator Lee Beyer stated that he spoke to both the Commission Staff and Commission Chair Hardie and reached the conclusion that the Commission should first be provided an opportunity to re-visit direct access. Senator Beyer explained that since SB 1547 passed, things had:

changed a lot, particularly as you are talking about new load where people [are] coming on and the Commission Chair has assured me that they see that change and want to encourage and be supportive for economic development and of people coming in who are willing to take a look at that and perhaps take a little more supportive look than they have in the past. I think that is good. What I told Commissioner Hardie is that we would let them do their job and if it seemed like they were not going on that way that we would be back in about 8 months and we would take another look at it. So I think the message we want to send to companies that are looking to Oregon as a place to do business and do green power is that we are indeed open for that.

Hearing on S.B. 979 Before the S. Comm. On Business and Transportation, 2017 Leg., 79th Sess. (Or. Apr. 9, 2017).

<sup>6</sup> See *In Re Rulemaking Related to New Large Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 (Sept. 14, 2018).

<sup>7</sup> See, e.g., Order No. 18-031 (January 30, 2018) (adopting Staff recommendation for an expedited process).

<sup>8</sup> Order 18-341 (September 14, 2018).

AR 614, which followed UM 1837, which was opened in May of 2017.”<sup>9</sup> It now has been 30 months,<sup>10</sup> and this delay – and any continuation thereof – has a material and detrimental impact on potential customers and the retail market as a whole.

Despite these facts, PGE has continued to place roadblocks preventing the program from being adopted, submits that there is “no compelling reason” to move forward with the Large NLDA program at this time,<sup>11</sup> and instead urges the Commission to delay program approval until it has an opportunity to address resource adequacy issues that (1) are generic policy issues not appropriate for consideration in this tariff compliance docket; and (2) do not present any immediate concerns. PGE’s position is simply unsupportable. There are clear, compelling reasons to move the forward with the Large NLDA program, as prospective customers have long ago lined up in the queue and need to deserve the opportunity to purchase electricity from their chosen provider; further delay is a clear barrier to the development of the competitive retail market, and directly contradicts the Commission’s clear intent to expedite the Large NLDA program.

By contrast, there is no reason whatsoever to continue to delay implementation of the Large NLDA program on PGE’s system without the RIC and RAC charges. As Staff Witness Gibben’s testimony makes clear, PGE’s current proposal would not likely result in any improvement to resource adequacy for a year and a half or more,<sup>12</sup> and moving the risk of adding a small, capped amount of additional long term direct access would at most be minimal.<sup>13</sup>

PGE’s actions should be viewed as what they are: attempts to undermine the law, derail the competitive market, and protect its monopoly position. The Commission should reject PGE’s

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<sup>9</sup> Staff 300 Gibbens p. 6.

<sup>10</sup> See Staff 300 Gibbens p. 6, noting that this process had gone on for 27 months as of August 2019

<sup>11</sup> *See, e.g.*, PGE/200, Sims-Tinker p. 8 (suggesting there is no compelling reason to move forward with the Large NLDA program at this time).

<sup>12</sup> Staff 300 Gibbens p. 4.

<sup>13</sup> Staff 300 Gibbens p. 5.

dilatory tactics and require that the program be implemented immediately, without the proposed RIC and RAD charges.

**A. It is Inappropriate to Consider Resource Adequacy Issues in this Docket.**

The Commission’s current regulations and policies do not allow utilities to include long term direct access in their resource planning.<sup>14</sup> Despite this clear policy, in the guise of this limited docket to implement its Large NLDA program, PGE asks the Commission to fundamentally reconsider its longstanding requirements for utility planning in general, including expressly requesting the Commission overturn its decades-old policy that utilities should not plan for load that is moving to long-term direct access.<sup>15</sup> PGE submits that “[t]imes have changed and it’s appropriate for the Commission to reconsider the balance between promoting competitive supply and shifting cost and risks to COS customers.”<sup>16</sup> While it may be true that it developments in the regional power markets may justify revisiting resource adequacy policies, the Commission is *already* addressing such issues in the Docket UM-2024, which was opened expressly to consider such issues.<sup>17</sup> The potential need for reconsideration of generic policy is not a basis for delay in approving what should be an expedited matter. Moreover, consideration of these generic issues is not appropriate in a tariff implementation docket, such as the one currently before the Commission. Any decision to change how the Commission treats resource adequacy for new load direct access in this PGE tariff proceeding will have precedential impact on standard direct access as well as on direct access programs offered by other utilities. The procedural issues created by this concern alone justify rejection of PGE’s proposal.

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<sup>14</sup> See IRP Guideline #9: “An electric utility’s load resource balance should exclude customer loads that are effectively committed to service by an alternative electricity supplier.” *In the Matter of Pub. Util. Comm’n of Or.: Investigation Into Integrated Resource Planning*, Docket No. 1056, Order No. 07-002, at 19 (Jan. 8, 2007).

<sup>15</sup> See PGE/100, Sims-Tinker/7-8.

<sup>16</sup> UE 358 / PGE / 100 Sims – Tinker / 3.

<sup>17</sup> See Docket UM 2024, ORDER NO. 19-271 (August 14, 2019)

**B. The Large New Load Direct Access Program Already Includes Significant Resource Adequacy Protections.**

1. The New Large Load Direct Access Service Transition Rate reimburses PGE for procurement of resource adequacy reserves.

PGE submits that its RIC and RAD charges are designed to recover “the costs of assuring system reliability and promote resource adequacy through planning and procurement.”<sup>18</sup> However, the Commission already imposed a “New Large Load Direct Access Service Transition Rate”<sup>19</sup> on the Large NLDA program expressly to cover resource adequacy concerns, including procurement of reserves to facilitate default service if a Large NLDA customer returns to utility service.<sup>20</sup> Requiring Large NLDA customers to pay a transition charge to cover resource adequacy issues, as well as a new set of charges as proposed by PGE to cover these same issues is inappropriate and would cause impermissible cost-shifting.

Moreover, in imposing the New Large Load Direct Access Service Transition Rate on Large NLDA, the Commission noted that neither the utilities nor Commission Staff had been able to translate their various resource adequacy and related concerns into a “specific calculated charge,” but directed that “[i]f or when these cost and risks are more comprehensively calculated, then the charge can be adjusted to reflect such a calculation.”<sup>21</sup> If PGE now believes it has a mechanism to “more comprehensively calculate” costs and risks related to the new load direct access program, it is welcome to seek an adjustment to the transition charge. But the Commission cannot allow PGE to collect *both* a transition charge, and additional RIC and RAD charges, covering identical concerns.

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<sup>18</sup> UE 358 / PGE / 100 Sims – Tinker / 10.

<sup>19</sup> See 860-038-0700 (2)(e); 860--38-0749(3)(a).

<sup>20</sup> See, e.g., Order No. 18-341, September 14, 2018 ( “expressly finding that the fixed generation charges imposed on Large new load direct access include “The actions taken by cost-of-service customers that create the possibility of the New Large Load Direct Access Program (NLDA) option, including procurement of reserves that, in part, serve the purpose of facilitating default service, if necessary.

<sup>21</sup> Order No. 18-341 at P. 3

2. Stringent program caps eliminate the need to consider RIC and RAD charges for the Large NLDA Program.

In discussions leading towards implementation of the Large New Load Direct Access program, PGE urged the Commission to adopt a very limited program cap. The Commission ultimately adopted a program cap of just six percent of the utility's annual weather normalized load, which PGE equates to a total program enrollment of no more than 119 aMW,<sup>22</sup> and an extremely small percentage of load in the Pacific Northwest in general. The small size of the cap dramatically reduces any possible harm to cost of service customers, as the Large NLDA program is so small that any additional risk created by approval of the program would be minimal.<sup>23</sup> The existence of this stringent cap mitigates any current concerns regarding resource adequacy from the Large NLDA program, and provides sufficient security to allow the Commission to ensure the program moves forward without delay while considering generic resource adequacy issues in Docket UM 2024, as it is currently doing.

3. The Commission Must Reject PGE's New "Long-Term Energy Option" Standard Offer.

In its filing, PGE proposed a new "long-term energy option" purportedly as a "standard offer" service, under which it seeks the ability to directly participate in the direct access market and supply customers with individually-negotiated service on a non-cost of service basis.<sup>24</sup> As proposed by PGE in Schedule 689:

The Company Long Term Market Energy Option (Standard Offer) is based on energy and capacity supply procured and managed by the Company on behalf of Customer(s). Prices for this option will be specified in a negotiated contract between the Customer(s) and the Company. The cost of the energy, capacity, and other attributes specified in the contract will be contingent upon Customer desired supply characteristics and will capture the State of

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<sup>22</sup> See *In Re Rulemaking Related to New Large Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 at 7 (Sept. 14, 2018).

<sup>23</sup> Staff 300 Gibbens p. 5.

<sup>24</sup> PGE /100 Sims – Tinker p. 19.

Oregon's renewable portfolio standard requirements. The RIC and the RAD apply during all months of service on this supply option.

PGE's proposal must be rejected for multiple reasons. First, while the Direct Access regulations allow for some forms of nonresidential competitive standard offers (*see* Section 860-038-0250), the regulations contemplate that they will be "standard" and available to any entity that elects such treatment, and not individually-negotiated rates. PGE's proposal appears to go beyond the intent of the rules, and is akin to the types of individual "special contracts" that are now prohibited under the Commission's rules.<sup>25</sup> As described by Calpine witness Higgins,

"PGE's proposal to procure energy and RPS products consistent with the specialized concerns of individual customers amounts to a proposal to offer a special contract to NLDA-eligible customers. The Commission's administrative rules define "special contract" as "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." Similarly, PGE's Schedule 99 for Special Contracts describes its 15 purpose as follows: "This schedule describes contracts between the Company and Customers at rates other than those contained in standard schedules." That describes the Long-Term Energy Option, which PGE also describes as a proposal for PGE to provide generation supply in accordance with individually negotiated prices set forth in a contract as opposed to rates contained in a standard schedule."

Second, the Direct Access laws, as well as the Commission's rules and regulations, make it abundantly clear that a utility cannot participate as a competitor in the Direct Access program in its own name. As set forth in the legislation, "the commission may require an electric company acting as an electricity service supplier do so through an affiliate." 2017 ORS 757.646. The law and regulations also make it clear that, to the extent a utility desires to participate in the direct access program, it must do so through an affiliate, and must ensure complete separation of costs.<sup>26</sup> Allowing PGE enter into individualized agreements where the price and terms of service, and even "customer-desired supply characteristics" are set through negotiation would

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<sup>25</sup> *See, e.g.*, OAR 860-038-0260(3) (After March 1, 2002, subject to Commission approval, an electric company may enter into special contracts for distribution service but may not enter into special contracts for power supply[.]” *See also* Calpine Solutions 100 Higgins 22.

<sup>26</sup> *See, e.g.*, OAR 860-038-0500, et seq. (establishing code of conduct and rules for utilities in competitive operations.)

clearly be a “competitive operation” prohibited under the Commissions regulations. Such action would inevitably lead to impermissible cost shifts, and would be contrary to the Commission’s statutory obligation to mitigate the vertical and horizontal market power of incumbent electric utilities.<sup>27</sup>

Also note that PGE proposes that this standard offer would be part of, and subject to, the limited cap on Large NLDA. Although the standard offer regulations are part of the Direct Access rules, they are not in and of themselves direct access offerings,<sup>28</sup> and it would not be appropriate to include any such standard offer sales as part of the very limited cap on Large NLDA.

### **III. CONCLUSION**

WHEREFORE, NIPPC respectfully requests that the Commission direct PGE to file a revised Large NLDA tariff within 10 days that excludes the RIC and RAD surcharges and the proposed Long Term Energy Option standard service.

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Respectfully submitted,

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<sup>27</sup> OAR 860-038-0260(3).

<sup>28</sup> See Calpine Solutions 100 Higgins 22