

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

AR 651

In the Matter of: **AR 651:**
Informal Rulemaking for Direct Access
Regulations

)
) COMMENTS OF THE NORTHWEST
) AND INTERMOUNTAIN POWER
) PRODUCERS COALITION ON
) STRAW PROPOSAL
)

The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”)¹ respectfully submits these comments on the Straw Proposal by the Oregon Public Service Commission Staff (“**Staff**”) regarding the development of rule language and policy positions for Docket AR 651 and the subsequent January 26, 2022 workshop (the “**Workshop**”) discussing the Straw Proposal.

NIPPC greatly appreciates Staff’s efforts in this docket and is generally supportive of the recommendations outlined in the Straw Proposal. NIPPC also appreciates that there is substantial work to be done for Staff to develop proposed regulatory language in the near term on a variety of complex issues. With that in mind, NIPPC reiterates and reinforces its positions as set forth at the Workshop, and looks forward to working with Staff and all interested parties in developing specific proposed changes to the Commission’s regulations where appropriate.

1. Publicly available pricing policy

The Commission’s current regulations require electricity service suppliers (ESSs) to provide indicative pricing on their websites that gives potential direct access customers information about potential costs. ESSs are not providing utility service. They do not have a guaranteed opportunity to earn a return on investment and have neither an obligation to serve nor an obligation to provide a standard offer. Each direct access agreement is individually negotiated among sophisticated parties. Posting of indicative pricing, and/or providing contact information

¹ NIPPC is a membership-based advocacy group representing electricity market participants in the Pacific Northwest. NIPPC members include independent power producers (“IPPs”), electricity service suppliers, and transmission companies. NIPPC’s current member list can be found at <http://nippc.org/about/members/>.

to allow customers to engage with company representatives that can offer a tailored price for a service request, is sufficient for the nature of this program. NIPPC believes the current regulations are sufficient and no modifications are necessary.

2. Caps and Behind the Meter (BTM) load growth

NIPPC maintains that caps on direct access programs are unnecessary to the extent that the program pays its share of non-bypassable charges and meets resource adequacy obligations. NIPPC also agrees with comments made at the Workshop that – to the extent caps are appropriate at all – they represent fact-specific issues that must be addressed in a contested proceeding, and it is not appropriate to establish fixed caps through regulation.

While NIPPC does not believe the current caps are appropriate, NIPPC supports a requirement that utilities be required to publish and maintain in easily accessible form current cap levels and remaining program room for all direct access programs. Prospective customers should not be required to guess as to whether program space remains available. NIPPC also strongly supports the proposal that petitions to exceed any cap be examined through a ninety-day process similar to what has been outlined for VRET programs in UM 1953.

3. Non-Bypassability

NIPPC generally supports Staff’s Straw Proposal with respect to non-bypassability and agrees that the specific set of charges, and the amount of such charges, must be established through contested proceedings. NIPPC encourages Staff to include proposed regulations that make it clear that non-bypassable charges must be recovered solely through delivery charges, allocated to a DA customer in the same method as a cost of service (“COS”) customer of similar size and load profile, and do not apply to programs in which the COS customers are entitled to participate or otherwise benefit but DA customers cannot participate or otherwise benefit.

4. Provider of Last Resort

NIPPC strongly supports Staff’s position that ESS participation in a resource adequacy (“**RA**”) program and also allowing utilities to charge DA customers for Provider of Last Resort (“**POLR**”) backstop capacity is duplicative and unnecessary. However, even in the absence of ESS participation in an RA program (and/or pending finalization of such program), NIPPC submits that the current regulations must be modified or clarified to avoid unnecessary duplication of facilities and restore compliance with the underlying statute. NIPPC appreciates that the Commission originally considered utility provider of last resort obligations at a time when the direct access program was relatively new and untested. Now, more than 20 years later, it is clear that such conditions can be relaxed. The Direct Access statute gives the Commission wide latitude to establish reasonable terms and conditions under which a utility is required to provide default electricity service to nonresidential electricity consumers in emergency situations, including where such customer is receiving electricity services through direct access.² And the statute makes clear that the “terms and conditions for default service *established by the commission shall provide for viable competition among electricity service suppliers.*”³ POLR proposals floated by the utilities, as a general matter, would require direct access customers to pay for a full duplication of capacity to cover extremely unlikely emergency circumstances and do not provide for viable competition. By resulting in an overbuild of resources, these proposals are economically and environmentally wasteful, anticompetitive, and unnecessary.

Finally, while NIPPC does not believe utilities should have POLR obligations for direct access customers that return to utility service without sufficient notice beyond providing market-priced power for a period of time, NIPPC remains amenable to further evaluation of preferential curtailment where all other options have been pursued. Given NIPPC’s view that the likelihood of such an occurrence is very low, NIPPC anticipates that any necessary infrastructure could be rolled out on an incremental basis.

² ORS 757.622 (“The Public Utility Commission shall establish the terms and conditions for providing default electricity service for nonresidential electricity consumers in an emergency. The commission also shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances when the consumer is receiving electricity services through direct access and elects instead to receive such services through the default service. The terms and conditions for default service established by the commission shall provide for viable competition among electricity service suppliers.”)

³ *Id.*, emphasis added.

NIPPC postulates that the cost of adding necessary infrastructure for remote curtailment would not be significant when initially constructing, updating, or repairing meter facilities over the course of time, and would certainly be more cost-effective than the utility proposal to unnecessarily duplicate generation capacity for events with a near-zero likelihood of occurrence.

Respectfully submitted this 14th day of February, 2022.



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