

June 18, 2018

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

Attn: Filing Center

**RE: AR 614—PacifiCorp's Comments**

In accordance with Administrative Law Judge Moser's Memorandum issued May 29, 2018, PacifiCorp d/b/a Pacific Power submits to the Public Utility Commission of Oregon (Commission) the following comments in docket AR 614 regarding the proposed draft rules relating to creation of a new large load direct access program.

PacifiCorp generally supports the proposed draft rules issued by Commission staff (Staff). PacifiCorp commends Staff's efforts to develop a balanced framework for a new direct access program to address new loads locating in Oregon. The proposed draft rules proposed by Staff are generally balanced and provide a framework for addressing additional issues if the program is expanded in a subsequent phase. PacifiCorp also appreciates the workshop process and Staff's efforts to balance divergent and opposing interests throughout the process. PacifiCorp is concerned, however, with the expedited process set forth for consideration of the proposed draft rules. Staff provided proposed draft rules on May 17, 2018. These proposed draft rules include several components that were not discussed as part of the investigation into new load direct access that occurred in docket UM 1837. There are also several issues that were discussed as part of UM 1837 that are not included in the proposed draft rules from Staff. A new load direct access program is an entirely new program and, as indicated by Staff, there is the potential for a subsequent phase to potentially develop a new load direct access program for new loads less than 10 aMW and this subsequent phase will use the rule adopted here as a framework. It is imperative that rules be carefully crafted and thoroughly vetted. PacifiCorp recognizes the desire of parties to move quickly to adopt rules for this new program, but cautions that expediency should not be the basis for limiting careful consideration of major policy issues presented by this new direct access program. Specifically, PacifiCorp requests the Commission direct further dialogue on the issue of the ability of utilities to participate in the new load direct access program as a service provider for new load as part of any subsequent rulemaking (i.e., phase two).

Attached to these comments are PacifiCorp's proposed modifications to the draft rules. Some of the proposed revisions reflect changes Staff discussed during the June 14, 2018 workshop. In addition, PacifiCorp also submits the following comments supporting its proposed edits for Commission consideration.

*Existing Consumer Load Shifting*

PacifiCorp agrees with Staff’s justifications expressed during the June 14, 2018 workshop in support of the Existing Load Shortage Transition Adjustment. Without the proper protections, this new program could allow a consumer to build an additional facility, possibly in close proximity, with one facility on direct access and the other facility on cost-of-service. The consumer could then shift production between facilities based on the state of the market and avoid transition charges designed to prevent unwarranted cost shifting. While this might seem unlikely for some industries, it could be quite simple for a large crypto currency miner to move its servers over to another building. This would place an unnecessary burden on the cost-of-service customers because of the potential for under-recovery of utility investments that were paid for to serve the existing load. While this scenario is an existing risk under the current program, the new program increases the risk for this potential gamesmanship. Limiting the direct access for new loads to renewable energy service can potentially mitigate this risk, because when a consumer chooses direct access due to factors other than strictly price, there is significantly less risk that those consumers will game the system based on the current state of the market.

The Commission has the authority to impose appropriate restrictions to protect against unwarranted cost shifting. As a new program, the risks to cost-of-service customers is unclear, and the expedited rulemaking process in this first phase of AR 614 may not provide adequate time to anticipate all risks. Accordingly, additional provisions to protect cost-of-service customers are appropriate. This issue could be revisited in the second phase of the rulemaking.

*Renewable Energy Service*

Senate Bill (SB) 979 was introduced during the 2017 legislative session. This bill would have, among other things, exempted new load from transition charges and created a renewable direct access program. Although SB 979 was not passed by the legislature, in response to SB 979, the Public Utility Commission of Oregon (Commission) opened an investigation (UM 1837) to take up the issue of a new load direct access program. The staff memo recommending the Commission open the investigation makes clear that the investigation—and this subsequent rulemaking—are direct outgrowths of the SB 979 discussions at the legislature. Given the linkage between SB 979 and this Commission’s investigation and rulemaking proceedings, PacifiCorp urges the Commission to consider a key component of SB 979: a *renewable* direct access offering. As reflected in PacifiCorp’s comments in UM 1837<sup>1</sup>, any new load direct access program should include a requirement that customers are only eligible to the extent they are seeking a one hundred percent renewable option.

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<sup>1</sup> PacifiCorp Opening Comments at 8 and PacifiCorp Reply Comments at 3; *see also* Citizens’ Utility Board of Oregon Opening Comments at 6 (“Oregon has set clear goals to reduce carbon emissions. This program should be in that context and should only be considered for new load that is helping to meet Oregon’s carbon reduction goals. Because it is unlikely that we can fully insulate cost-of-service customers from the costs associated with new direct access, it should be limited to circumstances where the direct access is consistent with Oregon forward-looking energy policy.”)

Staff has raised concerns with the Commission’s authority to impose a renewable requirement, however, by exempting new large loads from the existing direct access program the Commission is using its broad authority to design the new program and should carefully consider all potential cost shifting. In UM 1837 PacifiCorp agreed that the Commission has broad authority to create a direct access program for new load. Similarly, the Commission has broad authority under ORS 756.040 and ORS 757.600 *et al*, including the ability to define the eligibility requirements of customers seeking direct access. PacifiCorp recommends the addition of a customer eligibility requirement that the new load commit to being served one hundred percent by renewable energy.<sup>2</sup>

### *Program Cap*

The draft rules contemplate a temporary program cap of 12 percent of 2017 load. For PacifiCorp, this equates to a program cap of 202 aMW. PacifiCorp strongly encourages the Commission to adopt a permanent cap consistent with the caps in place for PacifiCorp’s other direct access programs. New load direct access program participants should count towards PacifiCorp’s overall direct access cap for its five year direct access program of 175 aMW<sup>3</sup>. A permanent program cap is absolutely necessary and applying the current direct access cap is appropriate. As with all direct access programs, there is a risk that consumers will leave in a trickle, but return in a wave. The impact of this is exacerbated with new load. An electric utility would not have previously secured the generation or transmission capacity to serve new large load direct access customers. Adverse market conditions could result in all new large load direct access customers returning to the system at the same time. This wave could easily overwhelm the utility and result in unanticipated adverse impacts to cost-of-service customers. Importantly, these concerns do not diminish after five years, the time proposed for the sunseting of the program caps in the draft rules.

Arguments that the energy charges for returning customers are adequate to protect cost-of-service customers fail to account for the aggregate impact. Additionally, those positions appear to focus only on energy, not on the other issues such as securing transmission capacity and reliability of the system. These are real risks that need to be anticipated. Accordingly, a new large load direct access program may require additional mitigation, as discussed below.

### *Utility Ability to Provide New Load Direct Access Service*

Throughout UM 1837, PacifiCorp advocated for consideration of the ability of the utility to provide new load direct access service to participants in this new program. There was no resolution of this issue in UM 1837, and given the expedited nature of this rulemaking proceeding, it seems unlikely that there will be time for thorough consideration of this issue, including specific proposals from the utilities on how they would participate in the new load

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<sup>2</sup> PacifiCorp proposes the definition of “renewable energy” in this context be consistent with the definition of renewable energy used for purposes of the renewable portfolio standard.

<sup>3</sup> See PacifiCorp’s Electric Service Schedule 296.

direct access program. By approving a new large load direct access program, the Commission is allowing consumers to go directly to the wholesale market. Any restriction on utility participation disadvantages those consumers seeking a full range of market participants. It also may raise issues regarding jurisdiction over wholesale markets. Further, allowing a utility to sell to new large load direct access customers can help offset the risk to cost-of-service customers by offsetting net power costs through wholesale energy sales. Most importantly, allowing more options for service would only increase the interest in new large loads locating in Oregon because of the range of choices. PacifiCorp requests that this issue be considered as part of any subsequent rulemaking phase related to new load direct access.

#### *Transition Charge*

PacifiCorp supports the transition charge proposed in the draft rules. The reduced transition charge appropriately balances the risk of unwarranted cost shifting with the opportunities under the new program. Allowing for new loads to go straight to direct access raises new issues that have, to date, not been thoroughly contemplated, and may not be entirely known for some time after implementation. PacifiCorp agrees with Staff that a reduced transition charge compensates cost-of-service customers for the value of the system and the use of delivery capacity that may otherwise be available in the future to serve cost-of-service load growth. Further, cost-of-service customers bear the risk of the utility's obligation to serve direct access consumers on this program if they decide to abandon direct access and take cost-of-service rates at times that are costly or under circumstances that could be otherwise uniquely disadvantageous. Requiring a transition charge acknowledges the investments of the utility and burden on cost-of-service customers.

#### *Jurisdictional Allocations*

PacifiCorp recommends striking section 860-038-0760 of the draft rules for two reasons. First, the language in the draft rule is overly broad and does not account for all of the costs that might be incurred by a multi-jurisdictional utility. PacifiCorp agrees that load associated with a new large load direct access consumer should not be included in allocations associated with generation resources. However, a utility may incur other costs associated with Oregon's new large load direct access program. PacifiCorp will incur additional administrative and general costs to address programmatic and regulatory issues associated with Oregon policies. Accordingly, the fair allocation of these costs among PacifiCorp's jurisdictions may require the inclusion of direct access load. Similarly, transmission costs require inclusion of the new large load direct access consumers to appropriately assign costs with benefits.

Second, this provision likely applies only to PacifiCorp and is more appropriately addressed in PacifiCorp's tariff filing. Again, PacifiCorp understands the concern regarding generation costs, but this issue is complex and deserves a more thorough analysis than can be conducted in an expedited rulemaking proceeding.

*Transmission and Distribution Charges*

To date, the scope of discussions have focused on the planning or securing generation resources to serve new load, but there are other risks that must be addressed. Unlike a cost-of-service customer choosing to switch to direct access, new load imposes unanticipated burdens on the distribution and transmission system. An unplanned, new load may be located in an area without sufficient distribution or transmission infrastructure. New large load direct access consumers may take future capacity from cost-of-service customers or socialize the costs of system upgrades, or both. Absent proper considerations, this could lead to unwarranted cost shifting and transfer of an unfair benefit to new consumers.

PacifiCorp is concerned that the draft rules do not address transmission or distribution issues. Specifically, current transmission programs for Oregon direct access consumers are based on the premise that those consumers were previously included in the utilities' load when determining transmission capacity under Federal Energy Regulatory Commission (FERC) open access rules. While it is appropriate to mandate the transfer of capacity to direct access consumers transitioning from cost-of-service to direct access, the same is not true for new large load direct access. The new load would not have been included in the utilities' load and resource reservations required under FERC open access. To comply with FERC regulations, new large load direct access consumers must arrange transmission service under the standard Open Access Transmission Tariff (OATT) provisions for network service, not the Oregon-specific direct access arrangement that anticipates a transition from bundled cost-of-service to wholesale delivery (e.g. PacifiCorp's OATT Attachment M).

PacifiCorp recommends the inclusion of a new section to exempt new large load direct access consumers from OAR 860-038-0590 and, instead, require compliance with the FERC-approved OATT for new network transmission customers. New large load direct access consumers are wholesale customers of delivery services. As such, delivery service is subject to federal jurisdiction and oversight.<sup>4</sup> FERC has mandated open access to utilities' transmission systems, thus FERC oversight does not present a barrier to Oregon direct access. FERC's established open access policy, and utilities' established processes to arrange for delivery, provide an acceptable way to address new loads that does not adversely affect the utility or its costs-of-service customers.<sup>5</sup> Absent this change, the new large load direct access consumer would receive transmission capacity that has not been reserved, which could subject the utility to violation of FERC regulations and exposure to substantial penalties.

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<sup>4</sup> *New York v. FERC*, 535 U.S. 1 (2002).

<sup>5</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,781 (1996), (“[I]f unbundled retail transmission in interstate commerce by a public utility occurs voluntarily or as a result of a state retail wheeling program, this Commission has exclusive jurisdiction over the rates, terms, and conditions of such transmission....”).

*Conclusion*

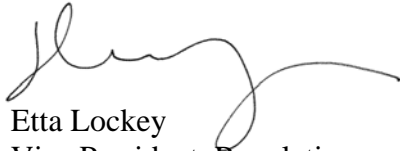
PacifiCorp is encouraged by the progress made in developing rules for a new large load direct access program. Careful consideration of the issues described in these comments, however, is needed to ensure the new large load direct access program can attract consumers without unwarranted cost-shifting and other adverse impacts. Specifically, PacifiCorp recommends that:

1. The new load direct access program include a customer eligibility requirement that the new load commit to being served one hundred percent by renewable energy.
2. The new load direct access program include a permanent cap consistent with the caps in place for PacifiCorp's other direct access programs, with the new load direct access program participants counted towards PacifiCorp's overall direct access cap for its five year direct access program, increased to 12 percent of 2017 load.
3. Utility participation in the new load direct access program be considered in a subsequent rulemaking phase related to new load direct access.
4. The elimination of the proposed rules on jurisdictional allocation; these issues are more appropriately raised and will be better addressed in PacifiCorp's tariff filing.
5. The addition of a new section of rules to require compliance with the FERC-approved OATT for new network transmission customers.

PacifiCorp appreciates the opportunity to provide these comments and proposed edits to the draft rules and looks forward to further participation in this rulemaking proceeding, including the June 20, 2018 rulemaking hearing.

If you have any questions about this these comments, please contact Natasha Siores, Manager, Regulatory Affairs, at (503) 813-6583.

Sincerely,



Etta Lockey  
Vice President, Regulation

**AR 614 May 22 Public Meeting Memo Attachment 1**  
*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 percent or more of the voting shares of which are held by another consumer.

(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 less 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 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) "Historic Cost of Service Load" means the highest 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) "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 Is designed to~~ result in an increase in power requirements of a consumer of ten average megawatts or more in any consecutive 12 month 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.

**860-038-0710**

**Requirement to Offer a New Large 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. An electric company may offer to serve consumers under the New Load Direct Access Program

**Commented [A1]:** PacifiCorp supports Staff's additional edit proposed in the June 14, 2018 workshop

## 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) All costs of administering the New Load Direct Access Program.
- (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. ~~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 [A2]:** PacifiCorp supports Staff's additional edit proposed in the June 14, 2018 workshop

## 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) New Large Load must be separately metered from any other cost-of-service load and incremental to the Historic Cost of Service Load at that Site.~~
  - ~~(b) New Load Direct Access Program is only available for consumers seeking energy from renewable resources~~
  - ~~(b) For New Large Loads, the load must be incremental to the Historic Cost of Service Load at that Site.~~
- (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.
- (2) Subsection (1)(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) If the actual load of a facility served under the New Large Load Direct Access Program is less than ten average megawatts per year in the second or 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 due to~~ 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 in the following direct access enrollment window.

**Commented [A3]:** Combined with (a)

## 860-038-0740

### Nonresidential Standard Offer, Default Supply and Return to Opting for Cost of Service Rates



- (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 opt for~~ 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 opting for~~ 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 ~~that~~ is appropriate to mitigate the rate impact to cost-of-service rates.

**Commented [A4]:** PacifiCorp supports Staff's additional edit proposed in the June 14, 2018 workshop

#### **860-038-0750**

##### **New Large Load Direct Access Program Caps**

- (1) The total annual load of all direct access loads, including 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.~~

#### **~~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.~~

#### **~~860-038-0750~~**

##### **~~Code of Conduct~~**

~~The Code of Conduct rules (OAR 860-038-0500 through 860-038-0640) govern the interactions and transactions among the electric company, its Oregon affiliates, and its competitive operations upon the affirmative written declaration of a New Large Load that it will participate in the New Large Load Direct Access Program.~~

#### **~~860-038-0760~~**

##### **~~Transmission and Distribution Access Under the New Large Load Direct Access Program~~**

- ~~(1) Each electric company shall provide nondiscriminatory access to transmission, distribution, and ancillary services, in accordance with applicable federal requirements.~~
- ~~(2) An ESS may request transmission service, distribution service or ancillary services under standard FERC-approved tariffs.~~