

August 1, 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 Closing Comments**

PacifiCorp d/b/a Pacific Power appreciates the opportunity to file with the Public Utility Commission of Oregon (Commission) these closing comments regarding the draft proposed rules for a New Large Load Direct Access program. In accordance with Administrative Law Judge Moser's July 17, 2018 Memorandum, PacifiCorp's comments are limited to the revised proposed draft rules filed by the Administrative Hearings Division (the AHD Rules) in this proceeding. PacifiCorp, however, reiterates its prior comments addressing the issues raised in this rulemaking.

PacifiCorp generally supports the AHD Rules as an acceptable balance of the risks associated with a new direct access program, but certain clarifications and revisions are required for the New Load Direct Access (NLDA) program to function properly, without unwarranted cost shifting and with responsibilities assigned to the appropriate entities. For new large loads (i.e. greater than 10 average megawatts (MW)), the AHD Rules provide a suitable framework with the recommended revisions (attached as redlines to the AHD Rules) and discussed in detail below.

**OAR 860-038-0720 – Transition Rates**

PacifiCorp supports the proposed New Large Load Direct Access Service Transition Rate proposed in the AHD Rules. There is an inherent impact to existing customers when any new load connects to the system and a transition charge represents an appropriate cost allocation to protect cost-of-service customers. PacifiCorp agrees that 20 percent of the fixed generation costs for five years strikes a reasonable balance of risks under the new program.

PacifiCorp also supports the proposed Existing Load Shortage Transition Adjustment, and the right of a new large load consumer to seek an exemption from the Existing Load Shortage Transition Adjustment upon the appropriate showing. There is a significant risk that creating a direct access program explicitly for new load creates opportunities for existing load to take actions to characterize existing load as new load for the purpose of availing themselves of the NLDA program. The Existing Load Shortage Adjustment is an appropriate protection to ensure cost-of-service customers are not subjected to unwarranted cost shifting when a consumer shifts

load between a meter on the NLDA program and a meter on either cost-of-service or a traditional direct access program. If there is an appropriate explanation for the NLDA participant to shift load, it is reasonable to exempt the consumer from the charge. PacifiCorp, however, requests that the Commission clarify that the new rules create a rebuttable presumption that the Existing Load Shortage Transition Adjustment must be assessed, and that the consumer electing to participate in the NLDA program must petition the Commission for the exemption.

### **OAR 860-038-0730 – New Large Load Eligibility Requirements**

PacifiCorp generally supports the framework outlined in the AHD Rules but recommends certain specific modifications to protect cost-of-service customers and assign appropriate responsibilities to NLDA participants. First, the proposed language in OAR 860-038-0730(1)(a) allows for a consumer to demonstrate an alternative means of measuring the new large load other than a meter. PacifiCorp recommends that this language be removed. Revenue-grade meters are required to track deliveries and assign costs under the direct access program. PacifiCorp does not know of any alternative means whereby it can accurately measure the new large load with comparable accuracy. This is particularly important for delivery. PacifiCorp is required to install meters so that it can assign appropriate changes its Open Access Transmission Tariff (OATT). Inclusion of the proposed language will only delay implementation of the program by inserting areas of uncertainty that have to be litigated in tariff filings or subsequent applications, and possibly at the Federal Energy Regulatory Commission (FERC).

Second, OAR 860-038-0730(1)(b) should reference ORS 757.518(1)(b)(A), rather than ORS 757.518(1)(b)(B). The current reference is limited to the short-term market exemption, but does not refer to the definition of a coal-fired resource itself. As currently drafted, the proposed revised rules would allow NLDA participants to be served entirely by unspecified market purchases or long-term contracts from coal resources.

Third, OAR 860-038-0730(1)(c) should be revised to clarify that if the NLDA participant violates the eligibility requirements for the NLDA program, the NLDA participant becomes a cost-of-service customer, subject to the same requirements as other cost-of-service customers for participation in the current direct access program, including participation in existing direct access programs during the following enrollment window. This change is critical to maintaining the integrity of Oregon's direct access programs and preventing unwarranted cost shifting.

Fourth, the timing of the notification under OAR 860-038-0730(d) may not reflect the reality of planning for new large loads. As proposed, a NLDA participant may choose to participate in the NLDA program any time before it executes an agreement to receive distribution service or one year before the expected starting date of the incremental load. This process does not reflect the reality of planning for new large loads. New large loads may be of such a size that delivery capacity, both transmission and distribution, will be an issue. Accordingly, the utility may be in discussions with the NLDA participant and seek to reserve transmission capacity, whether on its system or third-party transmission systems, to secure capacity to serve the new large load. If transmission upgrades are required, such upgrades may take years to construct. As written, OAR

860-038-0730(d) would not require notice of the new large loads election to participate in the NLDA program in advance of when the utility would need to start building out its system and reserving transmission capacity. This timing could result in the utility making significant investment in facilities or entering into binding contracts for delivery service well before the NLDA participant is required to provide notice of its election. PacifiCorp recommends that the language in OAR 860-038-0730(d)(A) be revised to refer to execution of a written agreement for service between the new large load and the utility, and that the language in OAR 860-038-0730(d)(B) be retained.

Finally, OAR 860-038-0730(3) raises a question of fundamental responsibilities under the NLDA program. PacifiCorp supports limiting eligibility to new large loads of 10 average MW or greater in this phase of the rulemaking, with the understanding that a subsequent phase or proceeding will address the potential for a new load direct access program for smaller loads (i.e., less than 10 average MW). The proposed exception to this size limitation due to energy efficiency, load curtailment or load control effectively undermines the 10 average MW threshold by allowing potential NLDA consumers to intentionally plan to reduce their load below the threshold. Energy efficiency, load curtailment or load control actions are *entirely* within the control of the consumer, and implementation within the first three years of operation would likely be part of the initial design of a new customer facility. Including the exception language allows an opportunity to game the threshold size requirement by submitting designs to support qualification in the NLDA program, while simultaneously planning to install more efficient equipment. A three-year requirement to meet the threshold as designed is not unreasonably burdensome, and there is no need to over-complicate this issue with exceptions that introduce unnecessary loopholes in the regulation. PacifiCorp also notes that, as drafted, it is not clear who bears the burden to prove the reason why the 10 average MW threshold was not met. PacifiCorp requests the Commission clarify that if the NLDA consumer does not meet the 10 average MW threshold, the utility may take appropriate steps to de-enroll the NLDA participant from the NLDA program *unless* the NLDA participant petitions the Commission for a determination of the reasons why the threshold was not met.

Similarly, PacifiCorp is concerned that OAR 860-038-0730(3)(a) inappropriately assigns a responsibility to utilities. The language in OAR 860-038-0730(3)(a) would require the utility to file a petition to de-enroll the consumer from the NLDA program. As an initial matter, litigation is not the appropriate way to initiate a change in a consumer's direct access eligibility status. More fundamentally, however, PacifiCorp disagrees that the utility should be in the position of requesting permission from the Commission to remove a consumer from the NLDA program. While it is appropriate for PacifiCorp to notify the potential NLDA participant of its eligibility or ineligibility for the NLDA program and for the Commission to provide an opportunity for that potential NLDA participant to provide the extenuating circumstances causing its failure to meet the load size requirement, de-enrollment should otherwise occur by operation of the tariff itself. Numerous tariffs<sup>1</sup> provide consumer load size demarcation points that make a consumer eligible or ineligible for different rate schedules. There is no other example of a tariff where PacifiCorp

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<sup>1</sup> This includes PacifiCorp rate schedules 23, 28, 30, and 48.

is required to petition the Commission to move a consumer from one rate schedule to another in the event the consumer becomes ineligible for service under their current tariff. PacifiCorp recommends that the language in OAR 860-038-0730(3)(a) be modified to provide that the utility will provide notice to the NLDA consumer and Commission if the consumer does not meet the requirements in OAR 860-038-0730(3), and the NLDA consumer may file a petition to demonstrate that the reduction in load was due to equipment failure or other causes outside the control of the NLDA consumer.

### **860-038-0740 – Nonresidential Standard Offer, Default Supply and Return to Cost of Service**

PacifiCorp supports the proposed language in the AHD Rules. A methodology for calculating the forward-looking rate adder for NLDA participants returning to cost-of-service is appropriately addressed in the implementation phase (i.e., tariff filing of PacifiCorp) of the NLDA program. The impacts of the NLDA participants returning to cost-of-service may be unique to each utility making each utility's tariff the appropriate place to examine the potentially unique circumstances and methodology. Furthermore, PacifiCorp continues to support including a forward-looking rate address to address the impacts of NLDA participants returning to cost-of-service. It is reasonable to isolate the cost impacts associated with such a return to the NLDA participant rather than shifting those costs to remaining cost-of-service customers.

### **OAR 860-038-0750 – New Large Load Direct Access Program Caps**

PacifiCorp supports the proposed program cap in the AHD Rules. PacifiCorp interprets the language in proposed OAR 860-038-0750 as providing a cap specifically for the NLDA program. The cap proposed in the AHD Rules reasonably protects cost-of-service customers during the development of the new program. The impacts of the NLDA program cannot be fully anticipated at this time and a cap for the NLDA program ensures that any unintended consequences will be limited and that the NLDA program and not impact the existing direct access program. This represents a positive opportunity for new loads considering location in Oregon to participate in the NLDA program.

Although not reflected in the AHD Rules, during the July 17, 2018 public meeting Administrative Law Judge Moser indicated support for a single combined cap for all direct access programs. PacifiCorp does not oppose this approach, but recommends in that instance the program cap for all direct access programs be set at 12 percent of 2017 load to ensure an adequate opportunity for participants in all programs.

PacifiCorp, however, remains concerned that the sunset provision introduces significant risk to cost-of-service customers. There appears to be some consensus amongst stakeholders that the sunset provision is intended to function as a check-in rather than a complete elimination of the caps. If this is the case, the language of the rules should reflect that intention and not use the term "sunset" so that future stakeholders are clear as to the intent of the rules. As discussed in prior comments, caps are an important protection for cost-of-service customers. An automatic

sunset of the program cap arbitrarily removes this protection without adequate consideration by the Commission. This creates an unnecessary risk of unwarranted cost shifting. PacifiCorp recommends that the Commission remove the sunset provision, and clarify that it will initiate a process to reevaluate the program cap in five years.

### **NEW OAR 860-038-0760 – New Large Load Direct Access Transmission**

PacifiCorp recommends that the Commission include a provision in the regulations clarifying that any participant in the NLDA program must, either on its own or through its Energy Service Supplier, reserve transmission capacity as an eligible transmission customer under the utility's OATT. This language is critical to recognize FERC regulations, and the utilities' obligations to provide non-discriminatory open access to their transmission systems, as discussed in the comments filed by PacifiCorp and Portland General Electric Company on July 26, 2018. Contrary to the assertions of some stakeholders, only a transmission service request secures capacity rights on a utility's transmission system. Load accommodation studies do not reserve capacity and could lead to a violation of federal regulations if assigned to a NLDA consumer.

### **STAFF'S PROPOSED ALLOCATION PROVISION**

PacifiCorp agrees that the jurisdictional allocation provision originally proposed by Staff is unnecessary and inappropriate in the proposed rules. Inter-jurisdictional allocations of system costs are complex and should be addressed in the specific tariff filings of a utility. From discussions during the Staff lead workshops, it is clear that Staff's interest in this provision is targeted at only PacifiCorp. PacifiCorp understands Staff's concerns and, as it has repeatedly stated, PacifiCorp agrees that load participating in the NLDA program should not be considered load for purposes of cost allocation of energy resources unless and until that load becomes cost-of-service load. However, transmission, distribution and system overhead costs are entirely different matters and these costs may be appropriately allocated to Oregon based on the impact of NLDA program participation. PacifiCorp will continue to discuss this issue with Staff during its Multi-State Process and in docket UM 1824.

PacifiCorp appreciates the opportunity to provide these comments and attached redlines to the AHD Rules. If you have any questions about these comments, please contact Natasha Siores, Manager, Regulatory Affairs, at (503) 813-6583.

Sincerely,



Etta Lockey  
Vice President, Regulation

Enclosure

## Attachment A

## **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, 50 percent or more of the voting shares of which are held by another consumer, engaged in the same line of business as the 50 percent or greater shareholder.

(b) “Average Historic Cost-of-Service Load” means the average monthly Cost-of-Service Eligible Load during the 60 month period beginning five years prior to the date a consumer gives binding notice of participation in the New Large Load Direct Access Program.

(c) “Cost-of-Service Eligible Load” means the load of a consumer 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 years.

(f) “Existing Site” means a site that receives or has received energy in the last five years that is eligible for a cost-of-service rate.

(g) “Existing Load Shortage” means the larger of zero or a consumer’s Average Historic Cost-of-Service Load plus Incremental Demand Side Management less the average Cost-of-Service Eligible Load during the previous 60 months.

(h) “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.

(i) “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.

(j) “Load Shifting” means the relocation of facilities, equipment, processes, manufacturing, employees or any economic activity for the deliberate purpose of increasing load at locations participating in the New Load Direct Access Program from locations not subject to the New Load Direct Access Program.

(k) “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) Is expected to result in a 10 average megawatt or more increase in the consumer’s power requirements during the second and third years after new operations begin.

(l) “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.

(m) “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 Enable a New Load Direct Access Program

An electric company that enables direct access service must enable a New Load Direct Access Program for New Large Load consumers, subject to the requirements set forth in this New Large Load Direct Access Program section of the Division 38 rules.

## 860-038-0720

### Transition Rates

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

- (a) 20 percent of the fixed generation costs for five years; and
- (b) All reasonable 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. While there is a rebuttable presumption that the Existing Load Shortage Transition Adjustment shall apply, a consumer may be exempted from charges made under this section if the consumer can demonstrate to the Commission that the change in load in question is not due to load shifting activity. The electric company tariff must include provisions detailing procedures and requirements for the demonstration.

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

(b) New Large Load Direct Access Program is only available for consumers contracting for energy resources that do not include any allocation of coal-fired resources as defined in ORS 757.518 (1)(b)(B) after January 1, 2030.

(c) New Large Load Direct Access consumers that are found in violation of the provisions of this section must take service under an applicable utility tariff and may enroll~~be enrolled~~ in the general cost-of-service opt out program in the following direct access enrollment window.

(A) A New Large Load Direct Access consumer must provide to the Commission upon request contracts or other materials necessary to investigate compliance with this section.

(B) An Electric Service Supplier that contracts for or supplies resources in the New Load Direct Access Program must provide an annual report to the Commission confirming the source of resource supplies for customers participating in the New Load Direct Access Program.

(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) Execution of a written agreement for retail electric service with the utility ~~A binding written agreement with the utility to receive distribution service~~ for eligible new load, or

(B) One year prior to the expected starting date of the incremental load.



(2) Subsection (1)(d) is waived for the eligible New Large Load consumer that has entered into a written agreement with an electric company prior to September 30, 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 does not meet or exceed 10 average megawatts in any 12 month period during the first 36 months 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 a direct access program of the consumer's choice.

(a) The electric company must provide notice to the Commission and consumer if the actual load of a facility served under the New Large Load Direct Access Program does not meet or exceed 10 average megawatts in any 12 month period during the first 36 months of receiving service~~petition to de-enroll the consumer under this provision~~, and

(b) The Commission shall provide the consumer will be provided an opportunity to file a petition and demonstrate to the Commission that its reduction in load to less than 10 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. The petition shall be filed within 60 days after receipt of notice that the actual load of a facility under the New Large Load Direct Access Program does not meet or exceed 10 average megawatts in any 12 month period during the first 36 months of receiving service. If within the timeframe established by the Commission the consumer does not provide evidence sufficiently compelling to the Commission that its inability to meet or exceed 10 average megawatts in any 12 month period during the first 36 months of service was due to equipment failure or other causes outside the control of the New Large Load Direct Access Program consumer, the consumer shall be de-enrolled from the New Large Load Direct Access Program.

## **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) of this rule.

(2) A 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 for direct service consumers, except as set forth in section (3).

(3) To mitigate the rate impact to existing cost-of-service consumers, an electric company must request Commission approval of a forward-looking rate adder applicable to New Large Load Direct Access Program consumers returning to cost-of-service rates or rates under OAR 860-038-0250 and 860-038-0280 when the electric company forecasts that:

(a) The return to rates under OAR 860-038-0250 and 860-038-0280 for an individual or group of New Large Load Direct Access Program consumers will result in a significant increase to existing cost-of-service rate; or

(b) The return to a cost-of-service rate for an individual or group of New Large Load Direct Access Program consumers will result in a significant increase to existing cost of service rate.

(4) The Commission will consider the rate adder under Section (3) of this rule as part of a tariff filing.

(5) The electric company must file annual updates that justify any rate adder developed according to this rule or any updates to the approved rate adder.

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

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

(1) Each electric company must make 6 percent of the electric company's weather normalized annual load in calendar year 2017 available to New Large Load ~~and Affiliated New Large Single Load~~.

(2) The Commission shall initiate a proceeding to reevaluate 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 enrollment limit.

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

##### **New Large Load Direct Access Transmission**

Each electric company shall provide New Large Load Direct Access consumer, or an electricity service suppliers serving New Large Load Direct Access consumer, access to its transmission facilities and distribution system in accordance with the requirements of ORS 757.637. A New Large Load Direct Access consumer, or an electricity service supplier serving a New Large Load Direct Access consumer, must request transmission service or transmission ancillary services under the utility's FERC-approved tariffs.