

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

**AR 651**

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

)  
) COMMENTS OF THE NORTHWEST  
) AND INTERMOUNTAIN POWER  
) PRODUCERS COALITION ON  
) STAFF’S STRAW PROPOSAL FOR  
) DIVISION 38 RULE LANGUAGE  
)

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The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) respectfully submits these comments on the Oregon Public Service Commission Staff’s (“**Staff**”) Division 38 Direct Access Straw Proposal filed September 1, 2022. NIPPC appreciates and agrees with many of the modifications proposed in this iteration of rules, and offers the following comments:

**1. Non-bypassable Charges – Section 860-038-0170**

NIPPC appreciates the updates proposed by Staff in this iteration of the rules for non-bypassable charges. As drafted and updated, NIPPC believes these rules offer a workable compromise.<sup>1</sup>

Although NIPPC supports Staff’s proposal for this section as a whole, clarification is needed with respect to subsection 2, which currently specifies that “All retail electricity consumers served by Direct Access are responsible for paying Non-bypassable Charges as determined by the Commission.” Non-bypassable charges, are, by their very nature, charges for cost incurrence to support programs and policies that should be borne by *all* retail customers, not just Direct Access customers. NIPPC continues to believe that non-bypassable charges other than those for which the legislature has mandated a collection

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<sup>1</sup> NIPPC’s support for this section of the rules as drafted represents a compromise of important interests. NIPPC reserves the right to further comment and/or seek further limits to imposition of non-bypassable charges to Direct Access customers to the extent this language is further modified going forward.

procedure through the public purpose charge should only be recovered through delivery charges, allocated to a Direct Access customer in the same manner and method as allocations of such costs to a utility's bundled service customer of similar size and load profile. Such charges should be expressly itemized both in the utility tariff and on customers' bills to allow a customer to compare the costs associated with taking Direct Access service versus utility service. NIPPC requests express clarification that the language of proposed subsection 860-038-0170, which limits its reference to recovery of costs from retail electricity consumers served by Direct Access, does not contemplate collection of costs from Direct Access consumers that are not similarly borne by utility bundled service customers, and does not preclude requiring the collection of such costs through a surcharge to all similarly situated consumers (whether served by Direct Access or by a utility).

## **2. Preferential Curtailment – (Section 860-038-0290)**

NIPPC appreciates Staff's willingness to consider the potential for preferential curtailment as a lower-cost option to ensure cost of service customers are not unduly burdened in the (very) unlikely event that Direct Access customers return unexpectedly to a utility's system due to failure or default by an ESS and where insufficient capacity and market power is available to serve all customers. NIPPC does not believe this preferential curtailment proposal is necessary to the extent all parties are meeting resource adequacy requirements, but, in concept, believes this proposal would be far less costly for the parties involved than some of the other alternatives that have been suggested, such as acquisition by utilities of significant amounts of additional excess capacity beyond resource adequacy needs. As addressed below, while NIPPC supports the concept, NIPPC believes that Staff's proposal requires modifications and clarifications to be workable and ensure any costs incurred are reasonable and commensurate with the risks to be avoided.

- **860-038-0290(2):** NIPPC recommends that this section be revised to make it clear that, in the event an ESS fails, *it is the customer's option* whether it desires to return to utility service or take other action, such as selecting a new ESS as its electricity service provider. For example, the proposed provision could be modified to read:

“If *Default Supply is requested by a former customer of an ESS that is* [~~an ESS~~] no longer providing service, the electric company must attempt to serve the returning consumer with market purchases or the electric company’s excess generation.

- **Section 860-038-0290(3):** NIPPC recommends that this section be revised to make it clear that preferential curtailment is only appropriate when *each* of the following conditions are met: (1) the customer requests service from the utility; (2) the utility does not have generation available; and (3) energy is not available in the market such that there is an imminent threat to system reliability. The proposed provision could be modified to read:

“If *Default Supply is requested by a former customer of an ESS that* [~~an ESS~~] is no longer providing service and *both* market energy *and* [~~or~~] excess generation is not *available such that there is an imminent threat to system reliability by providing service to such returning nonresidential Direct Access consumers.* the electric company may preferentially curtail such returning consumer subject to these provisions.

- **Section 860-038-0290(4):** NIPPC recommends that this section be revised in a variety of ways. First, the rules should clarify that the charges assessed to operationalize the preferential curtailment should be limited to *reasonable* charges, and the rules should provide an opportunity for the customer to have the Commission resolve disputes over such costs on an expedited basis. The rules should also provide the customer with the option to propose equipment and design that meets the curtailment functionality as an alternative to the utility’s proposed design. Second, NIPPC recommends striking the reference to “network and transmission” system upgrades. NIPPC anticipates that the upgrades to support curtailment functionality would more likely be at the distribution level, and perhaps even limited to new functionality for existing smart meters, rendering reference to “network and transmission” upgrades inappropriate. Third, NIPPC recommends that the term “transition charge” should not be used because that term has another defined meaning in the statutes and the Division 38 rules related

solely to recovery of uneconomic utility investments or stranded costs.<sup>2</sup> NIPPC recommends the following modifications:

4) The electric company may collect a ~~transition~~ *reasonable* charge from a consumer to recover necessary costs, *if any*, for ~~network and transmission~~ system upgrades *necessary to* ~~[that]~~ operationalize preferential curtailment of that consumer, using a Commission approved methodology. *Prior to undertaking such upgrades, the utility shall provide its proposed charges to the consumer for such upgrades and information and studies supporting the proposed equipment, design and functionality objectives, with reasonable opportunity for the consumer to review and comment on the proposal prior to committing to a final design. The consumer may propose an equipment and design alternative to the utility's proposed equipment and design to operationalize preferential curtailment. At the consumer's request, the Commission will resolve any dispute regarding the utility's proposal for the equipment, design, and charges necessary to operationalizing preferential curtailment for such consumer.*

- **Section 860-038-0290(5):** NIPPC believes that the proposed language in Section 860-038-0290's that exempts a utility from offering preferential curtailment where doing so is "infeasible" is vague and must be clarified. The real issue is whether the costs of operationalizing preferential curtailment in a manner that mitigates risks to the system are costs the consumer is willing to pay. Therefore, NIPPC recommends clarifying that point in the rules, or at a minimum including far more detail with respect to what criteria a utility would need to demonstrate to show the preferential curtailment is infeasible.

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<sup>2</sup> A "transition charge" is "a charge or fee that recovers all or a portion of an uneconomic utility investment." ORS 757.600(31). An "uneconomic utility investment" is "all electric company investments, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and workforce commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. 'Uneconomic utility investment' does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties as authorized by state or federal law." ORS 757.600(35).

NIPPC also submits that Staff’s proposal for Section 860-038-0290(5)(a)<sup>3</sup> should either be deleted in full or substantially modified to ensure it does not artificially require costly development of unneeded and unwanted excess capacity beyond an appropriate amount of resource adequacy, taking into account the very low likelihood that such additional resource adequacy would be necessary to protect the system, especially to the extent ESSs meet their own resource adequacy obligation. As drafted, this section seems to imply that, for those customers for which preferential curtailment is infeasible, the utility shall acquire a full duplication of capacity to serve such customers. NIPPC notes that (1) ESSs are already signing up to participate in the emerging Western Resource Adequacy Program; (2) ESSs are going through the necessary steps to meet such resource adequacy requirements in the future; and (3) the possibility that any single Direct Access customer, let alone all such customers, may be in need of emergency service from the utility is *extremely* remote. For those reasons, requiring the utility to plan for and acquire such capacity is inappropriate.

One alternative that is related to this proposal is to allow a customer (or their ESS supplier, as applicable) to purchase a resource adequacy product from a utility or other third party if the ESS does not meet the Commission-approved RA requirements, in lieu of the utility acquiring duplicate capacity specifically for the customer that does not desire such capacity.

NIPPC recommends the following edits if Section 5(a) and (b) are to be retained:

(5) An electric company is exempt from providing preferential curtailment for non-residential direct access consumers if it is infeasible to install the necessary facilities at a reasonable cost that the customer is willing to bare or curtailment would negatively affect the electric system’s reliability.

(a) Where an electric company is exempt from providing preferential curtailment, the electric company will ~~plan for and acquire capacity to account~~ ensure resource adequacy to account for a direct access consumer’s potential return to the electric

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<sup>3</sup> Staff’s proposal states that “Where an electric company is exempt from providing preferential curtailment, the electric company *will plan for and acquire capacity* to account for a Direct Access consumer’s potential return to the electric company’s service.”

company's service *unless the customer's electricity service supplier is otherwise meeting the resource adequacy requirements required by the Commission. Such resource adequacy should be aggregated among all such purchasers, and limited in scope to provide resource adequacy at a level commensurate with the extremely low risk that such resource would be called upon.*

(b) The electric company will design tariffs to collect charges from the direct access consumer that only recover the costs of the *resource adequacy* ~~of the capacity investment and the generation~~ that serves that consumer.

### **3. Direct Access Program Caps**

With respect to caps on the Direct Access program, Staff did not offer any formal rule language, but offered concepts for comment and engagement prior to a formal rulemaking. At the outset, NIPPC reiterates its position that there is no basis for caps on Direct Access to the extent the Direct Access program is subject to resource adequacy and appropriate non-bypassable surcharges. This is no longer a nascent program for which caps are needed while gaining operational experience. The program is now more than two decades old, and has operated without incident. There is no longer any broad policy basis for imposing caps on the program.

To the extent the Commission nonetheless determines a rationale exists for imposing a cap on Direct Access, NIPPC agrees with Staff's comment that cap levels must be implemented after contested cases, and submits that the burden should be on any entity proposing a cap to provide an evidentiary demonstration of real and substantial risks to Oregon ratepayers from further Direct Access program growth. This is now a mature program, and the Commission should not establish a cap based on vague, unidentified, or speculative concerns.

Staff noted examples of factors that may trigger a Commission to impose a cap. The first factor Staff cites is if "an increase in DA load compromises system reliability." To the extent that the Direct Access program is subject to resource adequacy requirements, this is unlikely to occur; to the contrary, an increase in DA load signals a diversification of supply and should improve system reliability. But to the extent the Commission identifies added DA load as an issue of concern, the appropriate resolution would be allocation of a

small portion of resource adequacy owned by the utility (to the extent not redundant to the ESS's obligations) recovered through transition charges, rather than a cap.

The second, third, and fourth factors cited by Staff are if “an increase in DA load shifts an unacceptable amount of cost to COS customers;” if “an increase in DA load poses undesirable long term financial impacts to COS customers or the electric system” and if “an increase in DA load poses other unmitigated risk to COS customers.” NIPPC submits that it is difficult to envision occurrence of these factors to the extent the Direct Access program is subject to resource adequacy and appropriate non-bypassable charges; but even if such events can be demonstrated to represent an actual risk supported by evidentiary fact (as opposed to a speculative concern), the best solution would be inclusion within a transition charge that flows back to general system customers the actual costs incurred in order to mitigate such risks, rather than imposition of a program cap.

To the extent a cap on long-term Direct Access is nonetheless established, NIPPC generally supports some of the concepts proposed by Staff with respect to annual recalculation of the cap, petitions to exceed the cap, and behind the meter growth, subject to certain nuances.

- NIPPC supports Staff's proposal that overall DA caps should be recalculated each year, or another regular interval, prior to the annual election window to determine availability under the cap, with the caveat that the general question posed in such a recalculation should be whether to freeze or increase caps. This is particularly important to ensure that commercial and/or industrial customers with long lead time for construction of facilities needed prior to receiving service can be confident Direct Access service will be available when they so desire.
- Similarly, even if some form of cap is established, such cap should not apply to behind-the-meter growth of a long-term Direct Access customer.
- Finally, NIPPC supports Staff's proposal that petitions to exceed the cap will be processed through a 90 day window, and/or in a manner that is at least as swift as the

process for waiver of caps for utility VRET programs with which Direct Access competes.

Respectfully submitted this 15th day of September 2022.



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