

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
) STAFF’S PROPOSED DIVISION 38
) RULE LANGUAGE
)

The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) respectfully submits these comments on the Oregon Public Service Commission Staff’s (“**Staff**”) proposed modifications to Division 38 rule language filed March 23, 2022. NIPPC appreciates and agrees with Staff’s proposal to presently limit rule changes to issues that can be adequately addressed in this initial phase of the proceeding without the need for a detailed evidentiary record, and we limit our comments accordingly. While these limited proposed rule changes are being addressed in this initial phase of the proceeding, NIPPC looks forward to working with Staff and interested parties on a parallel track to address additional issues related to direct access and continued development of a robust competitive market.

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

NIPPC appreciates the complexity of drafting a rule defining non-bypassable charges in a manner that is specific and properly delineated, while also flexible enough to include potential future charges. As currently drafted, NIPPC finds that Staff’s proposed language¹ for non-bypassable charges is overbroad and needs to be refined and more narrowly tailored.

¹ The proposed rule states:

(1) "Non-bypassable Charges" refers to costs that are directed by legislature to be recovered by all customers or determined by the Commission to be associated with implementing public policy goals related to reliability, equity, decarbonization, resiliency, or other public interests.

(2) The Commission will consider whether a charge meets some or all of the following when determining whether it is non-bypassable:

- a. It is required by statute
- b. It is an above-market cost
- c. It is necessary to implement public policy goals, including those identified in ORS 469A.465.

Of primary significance, any rules for non-bypassable charges should reflect the express intent of the language in House Bill 2021 (“HB 2021”) which makes it clear that non-bypassable charges should only apply with respect to (1) “obligations not similarly imposed on electricity service suppliers to comply with sections 1 to 15 of [HB 2021]”² and (2) “that retail electric consumers served by electricity service suppliers may avoid by obtaining electric power through direct access.”³ This latter phrase is key: the Commission should only require direct access customers to contribute to the costs of complying with HB 2021 obligations that they would otherwise avoid by moving to direct access. Examples of this do not include costs to pursue carbon reduction and renewable energy requirements. These obligations are already imposed on direct access, and direct access customers should not be required to bear such costs a second time. NIPPC urges Commission Staff to expressly include these statutory limitations in any rule language.

NIPPC also believes that the proposed rule language is overbroad in suggesting the costs include anything “associated with implementing” a wide range of undefined public policy goals “or other public interests.” Instead, the specific public policy goals should be specified, and should not be expanded without a modification to the rules. NIPPC submits that non-bypassable charges should be narrowly tailored where the legislature has been specific, as was the case in House Bill 3141 (“HB3141”) (2021), which amended the public purpose charge, extending its term, and specifying precise costs that should be considered non-bypassable:

“(A) The above-market costs of new renewable energy resources and customer investments in distribution system-connected technologies that support reliability, resilience and the integration of renewable energy resources with the distribution systems of electric companies and Oregon Community Power;

(B) New low-income weatherization;

d. It does not confer a demonstrable electric system benefit on some customers over others

e. It is in the public interest

(3) All Direct Access customers are responsible for paying Non-bypassable Charges as determined by the Commission.

² HB 2021, Section 14(2)

³ Id.

- (C) New energy-related investments in schools; and
- (D) Low-income housing.”

(HB 3141 (2021) Section 1). Given the express intent of the legislature itemizing these types of non-bypassable charges, and a specific mechanism for charging all customers to cover such costs, parties should not need to revisit these issues with respect to the items addressed in HB 3141.

NIPPC appreciates Staff’s inclusion within its criteria that a non-bypassable cost should not confer a demonstrable electric system benefit on some customers over others. NIPPC believes this should be extended to ensure that such costs do not subsidize a service provider. For example, direct access customers should not be obligated to contribute to costs for which the utility earns a return on equity. Such costs should be expensed to the maximum extent possible, and not included in a utility’s rate base.

Finally, NIPPC submits that non-bypassable charges other than those for which the legislature has mandated a collection 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 to a cost of service customer of similar size and load profile. Such charges should be expressly itemized to allow a customer to compare the charges that it would bear in selecting a service provider.

NIPPC proposes the following language be included in the Division 38 Rule to address non-bypassable charges:

860-038-0170: Non-Bypassable Charges

- (1) Costs meeting the following criteria shall be collected through a non-bypassable charge applied equally to similarly situated classes of retail customers of electric companies and electricity service suppliers:
 - a. The costs mandated by ORS 757.612 and
 - b. Costs that meet all the following conditions:
 - i. Costs imposed on an electric company to implement statutory public policy goals (including those identified in ORS 469A.465 or other statutes) not directly related to provision of retail electricity services and to the extent not similarly imposed on electricity service suppliers or direct access customers.
 - ii. Such costs either

1. Are accounted for by the electric company as an expense for which the electric company does not earn a return on investment; or
2. reflect only the portion of costs of such public policy goals that are above market value;
- iii. such costs are not funding a program that confers a demonstrable electric system benefit to some customers over others customers;
- iv. allocation of such costs to all retail ratepayers is in the public interest.

(2) Collection of non-bypassable surcharges.

- a. The Non-bypassable charges mandated by ORS 757.612 shall be recovered exclusively through the Public Purpose Charge.
- b. The nonbypassable charges meeting the criteria of Section 860-038-0170(1)(a) shall be recovered through a surcharge on distribution imposed on all similarly situated retail customers.

2. Electric Company and Electricity Service Suppliers Labeling Requirements – Section 860-038-0300

NIPPC does not oppose Staff’s proposed addition of a new subsection within 860-038-0300 requiring electricity service suppliers to post and annually update a summary of the aggregated energy supply mix and associated emissions for the Direct Access load served in Oregon in the previous year.⁴ NIPPC recommends that the Commission specify a date for compliance with this requirement on or around September 1 of a given calendar year.

3. ESS Emissions Planning Report – Section OAR 860-038-0405

NIPPC supports Staff’s proposed language for new Section OAR 860-038-0405– ESS Emissions Planning Report,⁵ subject to some minor clarifications:

⁴ “(2) An electricity service provider must post a summary of the aggregated energy supply mix and associated emissions for the Direct Access load served in Oregon in the previous year. When historic data is unavailable, the ESS must use a reasonable estimate of future resource mix. The summary must be updated annually and either included on or via a link on its indicative pricing website as required under OAR 860-038-0275”

⁵ **860-038-0405 ESS Emissions Planning Report**

(1) From the effective date of these rules through May 30, 2023, each ESS certified pursuant to ORS 757.649 that has sold electricity to retail electricity consumers in Oregon in the previous calendar year or has executed a contract to sell electricity to retail electricity consumers in Oregon within the following three calendar years are required to file a copy of the annual greenhouse gas emissions report submitted to the Oregon Department of Environmental Quality in accordance with HB 2021, Section 5(4)(a) within 10 days of filing with the Oregon Department of Environmental Quality.

(2) Beginning on January 1, 2027, each ESS certified pursuant to ORS 757.649 that has sold electricity to retail electricity consumers in Oregon in the previous calendar year or has executed a contract to sell electricity to retail electricity consumers in Oregon within the following three calendar years are required to file a report in accordance with subsection (4) of this rule. If prescribed by the Commission, each ESS must use established forms to provide information required under this rule.

NIPPC strongly supports the administrative efficiency of allowing ESSs to utilize the same filing as already required to be submitted to the Oregon Department of Environmental Quality, as set forth in Subpart (1). NIPPC notes that the current draft sunsets this obligation on May 30, 2023. NIPPC anticipates that this date should be extended 2027 and does not oppose such extension.

With respect to Subpart (2)⁶, NIPPC supports Staff’s proposal that this reporting requirement begin no sooner than 2027, three years before the compliance deadline in 2030. The statute is reasonably read to require a report beginning in 2027 given the 2030 compliance deadline and the three-year forward estimate of emissions in the ESS compliance plan. *See* HB 2021 Section 5(3)(a). The argument that an ESS compliance plan is the same as a utility’s “clean energy plan” is belied by the fact that the statute contains very different requirements for the ESS compliance plan (HB 2021 Section 5(3)) and the utility’s “clean energy plan” (HB 2021 Section 4).

Subpart (8) requires a “non-confidential” version of the report be publicly posted on the ESS’s website. NIPPC requests that this be clarified to state that nothing designated confidential in the PUC proceeding need be publicly posted. As currently written, the rule could be read to require the ESS to make public material that was confidential in the PUC proceeding.

4. Direct Access Program Caps -- 860-038-0270

The Proposed Rules include a placeholder to address Direct Access Program Caps, without proposed rule text. Instead, Staff provided a comment noting agreement with various parties that cap issues are not appropriate for this uncontested phase of the proceeding. Staff further notes in comments that “[t]o the extent caps are implemented, Staff maintains that they should be

(3) Confidential information will be treated consistent with OAR 860-001-0070, OAR 860-001-0060 and Public Records Law.

(4) Each ESS must file an Emissions Planning Report on or before June 1st of each calendar year that includes the following:

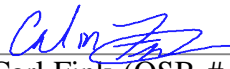
- (a) A cover-page with a checklist for each item required by the report, as set forth in this subsection, and an indication of where that information is found in the report. A uniform template for the cover page checklist will be provided on the Commission website under the Reports & Forms section.
- (b) Summary of the specific electricity-generating resources, MWh generation from those resources, emissions per MWh (MTCO_{2e}/MWh) associated with serving Oregon Direct Access customers, and all emissions from the previous calendar year that were reported to DEQ.
- (c) Load forecast for each of the following three consecutive years, aggregate for all Oregon Direct Access customers.

recalculated annually or at an interval chosen by the Commission to address load growth (including behind-the-meter) and ongoing risks. Additionally, Staff suggests avenues for petitions to exceed a capacity cap, such as a 90-day process akin to the methodology for VRET programs (see UM 1953).”

NIPPC agrees with Staff that cap issues for direct access programs should not be codified in rules at this time. NIPPC continues to believe that, once non-bypassable surcharges and resource adequacy obligations are in place, the justification for caps on the direct access program will be fundamentally changed, and the Commission should consider options up to and including eliminating caps, consistent with the Commission’s statutory mandate to “eliminate barriers to the development of a competitive retail market between electricity service suppliers and electric companies”⁷

NIPPC also supports the concepts included in Staff’s notes that the Commission should provide an expedited avenue for petitions to exceed a capacity cap, such as a 90-day process akin to the methodology for VRET programs.

Respectfully submitted this 21th day of April, 2022.



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⁷ ORS 757.646(1); HB 2021 (2021) Section 23.