

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 651

In the Matter of)
)
Rulemaking Regarding Direct Access Including) COMMENTS OF THE ALLIANCE OF
2021 HB 2021 Requirements.) WESTERN ENERGY CONSUMERS
)
)
_____)

I. INTRODUCTION

The Alliance of Western Energy Consumers (“AWEC”) submits the following comments and redlines in the above-referenced docket regarding Staff’s Proposed Division 38 Rule Language, filed March 23, 2022, which set forth additions and edits to Division 38 rules related to Long Term Direct (“DA”) Programs. The comments below specifically address caps and behind-the-meter (“BTM”) load growth, non-bypassable charges, unbundling, and provider of last resort (“POLR”) requirements. Attached hereto as Attachment A are redlines to Staff’s Proposed Rules. While AWEC is not commenting on the other topics in Staff’s Proposed Rules at this time, AWEC reserves the right to take a position on any or all of these other topics as this rulemaking progresses.

II. COMMENTS

A. Caps and BTM Load Growth

At this time, Staff “does not propose any detailed rules on caps at this time, and agrees...that the contested case phase is more appropriate to make determinations on this topic.”¹ AWEC continues to believe that DA programs should be structured such that caps are unnecessary and therefore supports Staff’s proposal to not include detailed rules on caps in the Division 38 Rules. The need for and design of caps, as well as the treatment of BTM load growth, are directly impacted by decisions regarding POLR. Because Staff proposed no language regarding POLR issues in the rules,² it is premature to conclude whether caps are necessary or how to design them. AWEC therefore concurs with Staff that any determination regarding DA caps should take place in UM 2024 or another contested case proceeding.

However, Staff further states that “[t]o the extent caps are implemented, Staff maintains that they should be recalculated annually or at an interval chosen by the Commission to address load growth (including behind-the-meter) and ongoing risks.”³ Initially, inclusion of any language such as “to the extent caps are implemented...” in the Division 38 Rules would indicate bias and should therefore be excluded. Nonetheless, if, in accordance with Staff’s comment and contrary to AWEC’s position, Staff ultimately proposes language related to DA caps, it should be clear that the rules do not require caps. Additionally, specific language regarding how caps are recalculated is necessary. Staff’s comment assumes that there is a

¹ Docket No. AR 651, Staff’s Proposed Division 28 rule language, at 28 (March 23, 2022).

² Id. at 1.

³ Id. at 28.

mechanism to recalculate caps annually or at an interval chosen by the Commission. Any mechanism to recalculate caps should be theoretically based and clearly described in the rules. To be clear, AWEC continues to suggest that no language regarding caps be implemented.

B. Non-Bypassable Charges

AWEC's redlines to OAR 860-038-0170(2) clarify the factors the Commission will consider when determining whether a charge is non-bypassable. To achieve this goal, AWEC suggests that the words "some or" be removed from OAR 860-038-0170(2), thereby requiring that the list of factors contained in subsection (2) are all present for a charge to be considered non-bypassable. AWEC believes that without this revision, there will be negative unintended consequences. For example, as currently drafted, per OAR 860-038-0170(2)(a), it is possible for the Commission to determine that a charge which is statutorily otherwise required to be non-bypassable, ultimately not be. Further, because it is beneficial to set forth factors which must all be present for consideration of non-bypassability, AWEC provides the following revisions to OAR 860-038-0170(2)(a)-(e).⁴

First, AWEC has substantial concerns with public interest standards set forth in subsection 2(e). As currently drafted, a charge that is found to be in the public interest may arguably constitute any prudently incurred cost by a utility. Inclusion of subsection 2(e) is therefore overly broad and should be removed in its entirety. Second, rather than "above-market costs" as set forth in subsection 2(b), AWEC suggests the first factor require the charge to be an

⁴ Id. at 18-19. Staff proposes five factors for the Commission to consider when determining whether a charge 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; (d) It does not confer a demonstrable electric system benefit on some customers over others; and (e) It is in the public interest.

“uneconomic cost of implementing a public policy goal.” An “uneconomic cost of implementing a public policy goal” may be defined as the difference between the cost of implementing the public policy goal and the regulated costs that are avoided through as a result of implementing the public policy goal. AWEC suggests that this term be included and defined in OAR 860-038-0005. Third, AWEC suggests that subsection 2(a) and (c) be combined as follows, “It is required by statute or is necessary to implement a public policy goal identified by statute, including those identified in ORS 469A.465.” This proposed revision thereby allows the Commission to consider whether a charge is statutorily non-bypassable both explicitly or in accordance with a statutorily identified public policy. AWEC has no suggested edits for subsection 2(d).

As such, AWEC’s proposed revisions to OAR 860-038-0170(2) reads as follows, “[t]he Commission will consider whether a charge meets all the following when determining whether it is non-bypassable: (a) It is an Uneconomic Cost of Implementing a Public Policy Goal; (b) It is required by statute or necessary to implement public policy goals identified by statute, including those identified in ORS 469A.465; and (c) It does not confer a demonstrable electric system benefit on some customers over others.

Further, it is AWEC’s understanding that NIPPC intends to propose the following OAR 860-038-0170(2) language regarding non-bypassable costs:

- a) The non-bypassable charges mandated by ORS 757.612 shall be recovered exclusively through the Public Purpose Charge.
- b) The non-bypassable 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.

AWEC understands part b) to mean that a schedule's allocated costs will be recovered through a \$ per kWh charge on delivered energy and that it does not address the allocation of non-bypassable costs between schedules. AWEC supports NIPPC' proposed OAR 860-038-0170(2) language with the caveat that AWEC's understanding is correct.

C. Unbundling

OAR 860-038-0220(8)(a),(b); 860-038-0240(3)(a),(b); 860-038-0250(2)(b), and 860-038-0260(2)(a),(b)⁵ includes language specifying that rates “must be based on the unbundled costs”. In practice, the Commission has set rates based on unbundled costs, but has deviated from these costs when necessary to mitigate abnormally small or large rate changes. For example, in PGE's most recent rate case PGE included a Customer Impact Offset (“CIO”) adjustment to reduce rates for residential and small commercial customers while increasing rates for other customers.⁶ The CIO constitutes a deviation from unbundled costs. AWEC understands that the language “must be based on the unbundled costs” means that, with the explicitly quantified rate mitigation adjustments such as the CIO, unbundled rates should be designed to exactly recover unbundled costs within both customer class and function. AWEC requests clarification on whether this understanding is correct.

D. Provider of Last Resort

Although Staff “considered a rule allowing preferential curtailment” of DA customers returning to COS on an emergency basis if all other options have been pursued, Staff “ultimately determined that additional investigation on the topic is needed, likely in the contested

⁵ See id. at 25-27.

⁶ See Docket No. UE 394, Fourth Partial Settlement, at 3 (Feb. 7, 2022).

case phase.”⁷ AWEC does not oppose Staff’s suggestion to continue discussion regarding preferential curtailment in future phase 1 workshops as well as the contested case phase. AWEC continues to believe that preferential curtailment of DA customers returning to COS on an emergency basis is appropriate only if there is no market energy to serve these customers. This will insulate cost of service customers against the risk that the use of emergency default service affects PGE’s reliability. Otherwise, as previously explained, an emergency service tariff, with appropriate adders to cover all of the utilities’ costs in providing emergency service, should be utilized.

III. CONCLUSION

AWEC appreciates the opportunity to comment on Staff’s Proposed Rules and looks forward to further engaging with stakeholders on these issues.

Dated this 25th day of April, 2022.

Respectfully submitted,

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⁷ Docket No. AR 651, Staff’s Proposed Division 28 rule language, at 1 (March 23, 2022).

ATTACHMENT A

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