

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 651

In the Matter of

OREGON PUBLIC UTILITY
COMMISSION,

Rulemaking Regarding Direct Access
Including HB 2021 Requirements.

STAFF COMMENTS

The Public Utility Commission of Oregon Staff (Staff) files these comments in Docket No. AR 651, Rulemaking Regarding Direct Access Including HB 2021 Requirements. These comments address the updates to the OAR Chapter 860, Division 038 rules that are included in the notice of proposed rulemaking filed On February 24, 2023.

Procedural History

On June 10, 2019, the Commission opened Docket No. UM 2024 to address the Alliance of Western Energy Consumers' (AWEC) petition for a general investigation into long-term DA programs, which noted there was a near-term need to address Direct Access with regards to issues like the changing energy landscape, cost shifting, and competitiveness of a retail market, among others.¹ The Commission granted AWEC's petition in Order No. 19-271.²

On October 1, 2021, Administrative Law Judge (ALJ) Christopher J. Allwein's memorandum outlined the Commission's new direction for the docket.³ The Commission determined that a phased sequence with a non-contested rulemaking followed by a contested case process would allow for more "effective definition, narrowing, and processing of the issues in this proceeding."⁴ The memorandum narrowed the scope of issues in the first phase to Direct Access requirements stemming from House Bill (HB) 2021 and some elements of the parties' straw proposals. As part of Phase I, Staff drafted proposed language changes to Division 38 and developed policy guidance on a small set of additional issues.

¹ [INITIAL \(APPLICATION, COMPLAINT, PETITION\), 6/10/2019 \(state.or.us\)](#).

² [UM 2024, Order No. 19-271](#).

³ [UM 2024 Memo 10-01-21.pdf \(state.or.us\)](#).

⁴ Id.

Following roughly nine months of proposals, comments and workshops, Staff proposed moving to a formal rulemaking at the July 12, 2022, Public Meeting.⁵ Stakeholders expressed a range of perspectives on Staff's draft rules and proposal to move to a formal rulemaking, including recommendations to revise the non-bypassable charge rule language, add rules that address confidential information in the ESS Emission Planning Reports, and exclude preferential curtailment frameworks at that stage.

The Commission rejected Staff's proposal on the basis that further policy guidance was needed regarding DA program caps, Provider of Last Resort (POLR) obligations, and the feasibility of preferential curtailment. The Commission recommended that Staff develop a revised proposal for these topics and request moving to a formal rulemaking after proposing additional rule language.

On September 1, 2022, Staff filed a straw proposal that enabled preferential curtailment of certain DA customers, added confidentiality protocols for ESS Emission Planning Reports, revised Staff's original non-bypassable charges language, and outlined criteria for considerations to expand DA program caps if applicable. Staff solicited stakeholder comments on the proposal and developed a revised set of rules to include in a formal rulemaking. Staff brought these revised rules before the Commission once again on October 4, 2022. During the public meeting, multiple parties expressed concerns that the rules regarding preferential curtailment needed additional discussion and refinement before implementation. The Commission approved Staff's recommendation to proceed to a formal rulemaking. However, due to the concerns from stakeholders about the POLR and preferential curtailment rules, the Commission directed Staff and parties to solidify more robust POLR and preferential curtailment rules prior to issuing a Notice of Proposed Rulemaking and proceeding with the formal phase.

Since the Commission's determination on October 4, 2022, Staff and parties have engaged in multiple workshops and rounds of comments, specifically focused on POLR and the opportunity for preferential curtailment. The revised rules in Attachment A were developed throughout this process.

The final recommended rule language in Attachment A only includes substantive changes to rules regarding POLR and preferential curtailment since Staff's previous recommendation to move to a formal rulemaking. The previously proposed rules for non-bypassable charges, ESS emission reporting, and disclosure requirements remain largely unchanged. However, the format of the rules has been aligned with the standard for the Secretary of State and the definition of "Non-bypassable Charges" has been moved from 860-038-0170 to the Definitions for Direct Access Regulation section in OAR 860-038-0005(22). Lastly, some definitions in OAR 860-038-0005 have been removed as they were either deemed to be common usage or were already defined in statute.

Summary of Revised Rules in 860-038-0290 and Stakeholder Input

Because the revised rule language in Attachment A only includes substantive changes to the Preferential Curtailment section 860-038-0290, please refer to Staff's report in Commission

⁵ [Staff Report for July 12, 2022, Public Meeting RM1.](#)

Order No. 22-364 for a description of stakeholder feedback and development for all other proposed rules in Chapter 860, Division 038. The Staff report from Commission Order No. 22-364 is available as Attachment B of these comments.

Staff believes that preferential curtailment provides a workable reliability safeguard in many circumstances. Given the state of the energy industry and the difficulties IOUs will face implementing a reliable and just energy transition for cost-of-service (COS) customers, Staff believes that it is reasonable to adopt policies that encourage DA customers and ESSs to be responsible for their own reliability and promote the efficiency and innovation that retail choice is supposed to capture. In Docket No. UM 2143, Staff has recommended requirements for an ESS to demonstrate resource adequacy (RA) through participation in a binding regional or state program. With this framework in place, Staff believes that enabling preferential curtailment can provide an opportunity to better balance reliability and efficiency rather than relying on the IOU to acquire duplicative capacity resources in case a DA customer returns.

The following sections provide parties' feedback on specific concepts in the proposed preferential curtailment framework as well as additional detail about the intent of certain rules in OAR 860-038-0290.

860-038-0290(1) and 860-038-0290(5)

Multiple parties raised concerns about the timing of the preferential curtailment rules' effective date. Because the contested case portion of UM 2024 will take place following the AR 651 rulemaking, stakeholders requested that section 0290 should not become effective until the contested case concludes. Staff agrees that the contested case will provide certain details that are relevant to a customer's decision to elect to be curtailable or not. To ensure that customers and utilities will have the necessary information prior to making curtailment elections, subsection (1) outlines an effective date of June 1, 2024 for the rules in OAR 860-038-0290. Staff believes this effective date will provide the necessary time for contested case determinations to be finalized before customers and utilities must begin planning to meet any requirements in the rules.

In subsection (5), Staff has included a 12-month minimum timeframe from the effective date of the rules for legacy direct access customers to elect whether to become curtailable or non-curtilable. The annual election window takes place in November, so even if the contested case is not resolved after June 1, 2024, it is likely that customers would still have at least a full year to make their curtailment election.

860-038-0290(3)

Staff's proposed rule directs DA customers to elect to be curtailable or non-curtilable during the November election window. New DA customers will make the election at the time they elect to transition to DA service. Legacy DA customers will make the election in the first election window that falls at least 12 months after the effective date of the section 0290 rules, as stated above. Staff notes that the intent is to provide enough time from the effective date of these rules for legacy customers to make an informed election decision. However, Staff has identified a minor edit in this rule to ensure it is fair. In a situation where space under the cap on non-curtilable load is limited, making the election 12 months after the effective date of the rules

could delay legacy customers from securing space under the cap. New DA customers can make their election during the nearest election window after the effective date of these rules, which could allow a new customer to obtain space under the cap before a legacy customer has the same opportunity. To ensure the rule is fair to legacy customers, Staff recommends the following edit:

(5) Consumers already participating in a New Large Load Direct Access Program or long-term opt-out direct access service must make the election defined in section (3) of this rule prior to or during the first annual election window that takes place at least 12 months after the effective date of this rule.

Staff recommends adding “*prior to or during*” to ensure that legacy DA customers can make the curtailment election at the same time a new customer is able to. Additionally, a customer may elect to change their curtailment election each year during the annual November window.

In comments, NIPPC suggested that the rule should clarify that DA customers are able to elect whether a given load is curtailable or not.⁶ Staff agrees that the feasibility of curtailment could be different for loads of different sizes or at certain service points, among other factors. Staff has included NIPPC’s suggestion to ensure that a customer is not entirely excluded from becoming curtailable due to an issue at a single service point or with a portion of load.

860-038-0290(4)(b)

Staff has included a rule outlining when a returning DA customer cannot be curtailed. Multiple parties have noted that it is necessary to include more detail about what type of load is considered infeasible to curtail. While Staff agrees that infeasibility will need to be defined, it is a determination that is best suited for the contested case. Many factors influence a utility’s ability to curtail. PacifiCorp has stated that a load could only be curtailable if it is above a certain megawatt threshold and can be curtailed in under 10 minutes. These types of criteria will require additional fact-finding in the contested phase to determine what should be classified as infeasible to curtail.

860-038-0290(7)

In previous straw proposals, Staff had proposed a backstop capacity charge for non-curtable load, and no such charge for curtable loads. Multiple parties including AWEC, NIPPC, Brookfield, and Calpine did not support a backstop capacity charge, and PacifiCorp proposed an alternative that would introduce a cap on non-curtable load in lieu of an upfront capacity charge. Parties were more amenable to the cap framework, and Staff has included this idea in rule. Staff notes that subsection (7) does not limit the Commission’s discretion to set caps on other sections of DA load, nor does it obligate the Commission to set any additional cap. This rule is exclusive to non-curtable load.

The cap should be set at a level that limits any potential reliability and cost impacts in the event DA customers return to default supply. Staff has removed language that imposes a backstop

⁶ Docket No. AR 651, NIPPC Supplemental Comments on Preferential Curtailment Proposal, at 5, (February 3, 2023).

capacity charge but has added provisions in other subsections that ensure any generation or market purchases that serve a returning DA customer are priced at a level that does not harm COS consumers.

860-038-0290(8)

Staff has continued to include the provision that all costs for curtailment infrastructure must be paid for by the DA customer. This continues to be an important safeguard against cost shifting to COS customers.

860-038-0290(9) and 860-038-0290(10)

PAC and PGE have expressed concerns about liability in a situation where a utility is allowed to curtail a returning customer. Staff has included that a returning customer should be served with Uncommitted Supply if possible before opting to curtail the customer. Uncommitted Supply is defined to only be true excess generation or market purchases that are not used for the utility's contractual obligations, reserve margins, or COS customers. Additionally, Staff has included that the Commission will set criteria that clarify how the utility can ensure it has complied with the rules when enacting curtailment.

Staff notes that PAC proposed rule language outlining an application process for customers who elect to be curtailable that the utility would approve or deny. Staff believes such a framework may be too prescriptive to include in rules and may function more effectively in a tariff. This level of detail may need to be informed by findings in the contested case as well.

860-038-0290(11) and 860-038-0290(14)

Without requiring dedicated backstop capacity investment for a DA customer, there is the potential for a returning customer to be served with generation that could have been sold at a higher market price. COS customers could lose an opportunity to receive the benefit from that price difference. Subsections (13) and (14) ensure that the DA customer pays the higher market price so that COS customers retain the potential benefit from selling excess utility supply.

Staff recommends a minor change to these rules compared to the Notice of Proposed Rulemaking. Staff recently became aware that, as written, the rule would require the customer to unnecessarily pay a higher cost than market price if the utility's own generation is more expensive than market prices. This requirement would not provide any additional safeguards to COS customers and is not needed. Staff recommends the following change to the rules:

(11) If a returning preferentially curtailable consumer is served with Uncommitted Supply, the consumer will be charged ~~the greater of~~ the incremental capacity and energy costs or the retail energy market costs required to serve on less than the required notice of return in the electric company's direct access program tariff. Even if the retail energy market costs are greater than the utility's own incremental capacity and energy costs, the curtailable consumer will be charged the market cost.

(14) If a non-curtable consumer returns to the electric company's service without the required notice of return under an electric company's direct access program tariff, the electric company shall charge the non-curtable consumer ~~the greater of~~ the incremental capacity and energy costs or the retail energy market costs required to serve on less than the required notice of return. Even if the retail energy market costs are greater than the utility's own incremental capacity and energy costs, the non-curtable consumer will be charged the market cost.

860-038-0290(15)

Currently, a returning DA customer must move from emergency default service to standard offer service after 5 days. The customer can remain on standard offer indefinitely until either returning to DA or choosing to move to COS. Staff believes that the ability to remain on standard offer indefinitely could present risks to COS customers. If the utility begins purchasing market energy for a returning customer after they leave emergency default service, any inability to obtain that energy would potentially impact COS. This situation could become exacerbated in an event with multiple ESS failures or market illiquidity.

Instead, subsection (15) includes a time-limited process where the returning customer could elect to remain on default supply for the duration of the required notice of return under a utility's DA tariff or go back to an ESS. This timeframe would be determined by the Commission, and the customer would pay the cost of generation or market supply price (as described in subsections (11) and (14)) required to serve them for that duration. The customer could opt to return to direct access at any point during this time, but if they remain on standard offer after this window, the customer will have to remain on that schedule for the remainder of the notice of return period before returning to COS. Staff believes this rule better protects COS customers, especially when a backstop capacity charge is not present in the POLR framework.

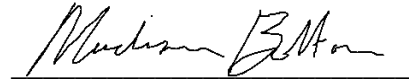
Future Process in UM 2024

Upon conclusion of this rulemaking, Staff will begin to transition to the contested case phase in UM 2024. Staff anticipates that at least the following topics will be addressed over the course of the contested case:

- < Existence and level of caps on Direct Access, including non-curtable load.
- < Determining criteria for a customer to be preferentially curtable.
- < Methodology for collecting the costs associated with curtailment infrastructure.
- < Types of charges that are non-bypassable by Direct Access.
- < ESS emission reporting template, compliance, and Commission evaluation.

This concludes Staff's comments.

Dated this 31st day of March, 2023.

A handwritten signature in cursive script, appearing to read "Madison Bolton", is positioned above a horizontal line.

Madison Bolton
Senior Energy and Policy Analyst
Strategy & Integration
503-508-0722

ATTACHMENT A: Notice of Proposed Rulemaking

OFFICE OF THE SECRETARY OF STATE
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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 860
PUBLIC UTILITY COMMISSION

FILED

02/24/2023 4:51 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Direct Access Rulemaking (AR 651)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/25/2023 4:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Diane Davis
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/04/2023

TIME: 1:30 PM

OFFICER: Christopher J. Allwein

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1605134000

NEED FOR THE RULE(S)

These rules are needed to assist with implementation of House Bill (HB) 2021 (2021) sections 5, 14, and 25 as well as to update the rules for Direct Access (DA). Updates include housekeeping measures, word changes for clarification and the elimination of redundancies. The proposed rules outline the criteria for charges that cannot be bypassed by taking DA service, require disclosures of emissions information for ESSs, direct utilities to implement preferential curtailment in certain emergency default service scenarios, and codifies the requirements for ESS emissions planning reports addressed in HB 2021 now Oregon Laws 2021, Chapter 508.

Any person may file comments by April 25, 2023. The Commission encourages participants to file written comments concerning the proposed rule revisions as early as practicable in the proceeding so that other participants can consider and respond to the comments before the deadline.

Participants who present oral comment at the April 4, 2023, hearing will be asked to also submit written comments before the comment period closes on April 25, 2023.

Please reference Docket No. AR 651 on comments and attach them as a Word or pdf file to an e-mail to the Commission's Filing Center at PUC.FilingCenter@puc.oregon.gov.

Interested persons may review all filings online at <https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=23063>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and OAR 860-001-0200 through 860-001-0250 found online at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4027>.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 2021 (Oregon Laws 2021, Chapter 508) available online at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2021orlaw0508.pdf

ALJ Christopher J. Allwein's Memorandum available online at <https://edocs.puc.state.or.us/efdocs/HDA/um2024hda165613.pdf>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The rules are expected to have little to no direct impact on racial equity in the state of Oregon and only apply to Direct Access. Indirectly, allowing large utility customers with high energy demand to shop for direct access to energy supplies may assist certain customers to remain or become more competitive in a global economy, and thus facilitate job retention and economic growth and the potential alleviation of some economic inequity exacerbating racial inequity.

FISCAL AND ECONOMIC IMPACT:

Staff time will need to be dedicated to the implementation of the rules, but the Commission anticipates that no additional FTE will be required. The Commission does not anticipate that these rules will impose costs on other state agencies.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) It is unlikely that agencies and units of local government will be impacted, however, Energy Service Suppliers (ESS) will be impacted to the extent that they are required to provide additional reporting. The rules apply to Electric Utilities and Electricity Service Suppliers who serve Direct Access customers whose relatively high energy demand is indicative of larger businesses.

(2)(a) Small businesses are unlikely to be impacted by the rules.

(b) Small businesses are unlikely to be impacted by the rules.

(c) Small businesses are unlikely to be impacted by the rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not specifically targeted during the rule development process. PUC stakeholders from the UM 2024 service list were invited to participate in all informal processes for the AR 651 rulemaking.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

These rules adopt in part the requirements of HB 2021 and provide additional detail around requirements for Direct Access in Oregon. PUC Staff held workshops and rounds of written comments with stakeholders prior to opening this

formal stage of rulemaking.

RULES PROPOSED:

860-038-0005, 860-038-0170, 860-038-0290, 860-038-0300, 860-038-0405, 860-038-0590, 860-038-0740

AMEND: 860-038-0005

RULE SUMMARY: This rule adds a definition for "Preferential Curtailment," deletes unnecessary definitions, arranges the definitions alphabetically, and renumbers the rule provisions.

CHANGES TO RULE:

860-038-0005

Definitions for Direct Access Regulation ¶¶

As used in this Division:¶¶

- (1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.¶¶
- (2) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:¶¶
 - (a) Local governments;¶¶
 - (b) Electric companies;¶¶
 - (c) Residential consumers;¶¶
 - (d) Public or regional interest groups; and¶¶
 - (e) Small nonresidential consumers.¶¶
- (3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.¶¶
- (4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.¶¶
- (5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control, and energy balancing services.¶¶
- (6) "Commission" means the Public Utility Commission of Oregon.¶¶
- (7) "Common costs" means costs that cannot be directly assigned to a particular function.¶¶
- (8) "Competitive operations" means any electric company's activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:¶¶
 - (a) Energy efficiency audits and programs;¶¶
 - (b) Sales, installation, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and¶¶
 - (c) Energy management services, including those services related to electricity metering and billing. Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.¶¶
- (9) "Constructing and operating," as used in ORS 757.612(3)(b)(B), means constructing, or operating, or both.¶¶
 - (a) As used in ORS 757.612(3)(b)(B), "constructing" includes the following activities:¶¶
 - (A) Pre-development project studies, activities or costs that are related to the planned development of a new renewable energy resource that a developer or owner would reasonably expect to incur; and¶¶
 - (B) Activities or costs directly related to the building of a new renewable energy resource.¶¶
 - (b) As used in ORS 757.612(3)(b)(B), "operating" includes the activities and costs necessary for a new renewable energy resource to function and to be maintained in good working order.¶¶
- (10) "Consumer-owned utility" means a municipal electric utility, a people's utility district, or an electric cooperative.¶¶
- (11) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.¶¶
- (12) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a

consumer, as determined by the Commission.¶¶

(135) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.¶¶

(146) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.¶¶

(15) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.¶¶

(16) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.¶¶

(17) "Divestiture" means the sale of all or a portion of an electric company's ownership share of a generation asset to a third party.¶¶

(187) "Economic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of 757.600 to 757.667, absent transition credits. "Economic 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 authorized and imposed under state or federal law.¶¶

(19) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.¶¶

(208) "Electric company operational information" means information obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as "competitive operations." Such information includes, but is not limited to, data relating to the interconnection of customers to an electric company's transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company's transmission or distribution system, processes, operations, or plans or strategies for expansion.¶¶

(21) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.¶¶

(22) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.¶¶

(23) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.¶¶

(24) "Electricity services" means electricity distribution, transmission, generation, or generation-related services.¶¶

(259) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.¶¶

(2610) "Emergency default service" means a service option provided by an electric company to a nonresidential consumer that requires less than five business days' notice by the consumer or its electricity service supplier.¶¶

(2711) "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.¶¶

(128) "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.¶¶

(2913) "Joint marketing" means the offering (including marketing, promotion, or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its Oregon affiliate, or through contact initiated by the consumer.¶¶

(3014) "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.¶¶

(31) "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.¶¶

(32) "Local energy conservation" means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.¶¶

(33) "Low-income weatherization" means repairs, weatherization, and installation of energy-efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.¶¶

(34) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy-efficient technologies and practices.¶¶

(315) "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.¶¶

(316) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.¶

(37) "New" as it refers to energy conservation, market transformation, and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.¶

(38) "New renewable energy resource," as used in ORS 757.612(3)(b)(B), has the meaning provided in 757.600(21) and references a specifically identified project that has, or is planned to have after construction, a nominal electric generating capacity, as defined in 469.300, of 20 megawatts or less.¶

(3917) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.¶

(40) "Nonresidential consumer" means a retail electricity consumer who is not a residential consumer.¶

(418) "Ongoing valuation" means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.¶

(4219) "One-time administrative valuation" means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.¶

(4320) "One average megawatt" means 8,760,000 kilowatt-hours (8,784,000 in a leap year) of electricity per twelve consecutive month period.¶

(44) "Oregon affiliate" means an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.¶

(4521) "Oregon share" means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.¶

(4622) "People's utility district" has the meaning given that term in ORS 261.010. Non-bypassable Charges" are costs that are directed by the legislature to be recovered by all customers or charges that retail consumers served by electricity service suppliers otherwise may avoid by obtaining electric power through direct access that are determined by the Commission to be appropriate for recovery from all customers.¶

(4723) "Portfolio" means a set of product and pricing options for electricity.¶

(4824) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:¶

- (a) Local governments;¶
- (b) Electric companies;¶
- (c) Residential consumers;¶
- (d) Public or regional interest groups; and¶
- (e) Small nonresidential consumers.¶

(25) "Preferential Curtailment" refers to the electric company's obligation to curtail eligible direct access consumers that return to the electric company service without providing the electric company with the full period of notice required by the electric company's direct access program tariff. The electric company must curtail such consumers as necessary to protect cost-of-service customers from the impacts of the returning consumer's unplanned load.¶

(26) "Proprietary consumer information" means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.¶

(4927) "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Oregon Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.¶

(5028) "Registered dispute" means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission's Consumer Services Section but is not the subject of a formal complaint.¶

(51) "Regulated charges" means charges for services subject to the jurisdiction of the Commission.¶

(52) "Regulatory assets" means assets that result from rate actions of regulatory agencies.¶

(5329) "Renewable energy resources" means:¶

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;¶

(b) Dedicated energy crops available on a renewable basis;¶

(c) Landfill gas and digester gas; and¶

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.¶

(5430) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.¶

(5531) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.¶

(5632) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.¶

(57) "Serious injury to person" has the meaning given in OAR 860-024-0050.¶

(58) "Serious injury to property" has the meaning given in OAR 860-024-0050.¶

(5933) "Site" means:¶

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or¶

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:¶

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;¶

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and¶

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.¶

(60) "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.¶

(61) "Special contract" means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.¶

(6234) "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.¶

(635) "Total transition amount" means the sum of an electric company's transition costs and transition benefits.¶

(364) "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.¶

(6537) "Transition benefits" means the value of the below-market costs of an economic utility investment.¶

(6638) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.¶

(6739) "Transition costs" means the value of the above-market costs of an uneconomic utility investment.¶

(6840) "Transition credit" means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.¶

(6941) "Transmission grid" means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries. Unbundling means the process of assigning and allocating a utility's costs into functional categories.¶

(42) "Uncommitted Supply" is generation reasonably available to the electric company in the market or through the electric company's own resources. Uncommitted Supply excludes any generation needed to meet the electric company's firm load service obligations, anticipated near-term load obligations, contractual obligations, and

federal reliability standards.¶

(7043) "Unbundling" means the process of assigning and allocating a utility's costs into functional categories.¶

(74) "Economic Cost of Implementing a Public Policy Goal" means the difference between the cost of implementing the public policy goal and the regulated costs that are avoided as a result of implementing the public policy goal.¶

(44) "Uneconomic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force 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 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.¶

(7245) "Unspecified Market Purchase Mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Oregon Department of Energy.

Statutory/Other Authority: ORS 183, ~~756~~, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

ADOPT: 860-038-0170

RULE SUMMARY: This rule articulates criteria used in Commission determinations on whether a charge should not be able to be bypassed as a result of taking Direct Access service.

CHANGES TO RULE:

860-038-0170

Non-bypassable Charges

(1) In determining whether a cost is appropriate for recovery as a non-bypassable charge, the Commission shall consider the following factors:¶

(a) whether it is required by statute;¶

(b) whether it is an uneconomic cost of implementing a public policy goal such as those identified in ORS 469A.465 or similar public policy goals related to reliability, equity, decarbonization, resiliency or other public interest for which retail consumers served by electricity service suppliers otherwise would not meaningfully contribute;¶

(c) whether or not it confers a demonstrable electric system benefit on some customers over others;¶

(d) whether it is in the public interest;¶

(e) whether it is necessary to be non-bypassable under the Commission's discretion in order to establish fair, just and reasonable rates and prevent unwarranted cost shifting.¶

(2) All retail electricity consumers served by Direct Access are responsible for paying Non-bypassable Charges as determined by the Commission.

Statutory/Other Authority: ORS 183, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.600 - 757.667

