

February 3, 2023

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

RE: AR 651— PacifiCorp’s Supplemental Comments on Staff’s Revised Proposal.

PacifiCorp appreciates the opportunity to share additional information in support of its comments on Staff’s Revised Proposal.¹

A. General points on Staff’s Revised Proposal.

1. The draft rules must be clear.

As PacifiCorp has noted in informal comments, before Staff’s Revised Proposal can be a workable, comprehensive set of preferential curtailment rules, certain concepts must be clarified, and additional issues worked through. PacifiCorp noted this at the workshop and continues to believe more specificity is necessary.

PacifiCorp is sharing redlines to Staff’s Revised Proposal, which are attached to these comments. While a number of concepts are still in need of development, these redlines attempt to include some important guiding principles, and represent some initial efforts at additional specificity and clarity. Some of the draft rules may be better housed in other parts of the Commission’s direct access rules but are included here to ensure they are read together.

2. Customers who choose to leave the system must not harm customers who stay.

PacifiCorp continues to oppose the idea that the utility regulatory system should be unduly fractured by hybrid regimes at a time of increased risk and uncertainty in the Western Interconnection. The Oregon Legislature is not moving the state to full retail access. It has doubled down on transitioning the energy system largely through the efforts of this Commission and regulated utilities. Access to some competition is still Oregon policy, but one with major caveats.

¹ Staff Division 38 Preferential Curtailment Rules Updated Proposal (Dec. 16, 2022) (“Revised Proposal”).

PacifiCorp's constructive engagement on preferential curtailment stems from its faith in the Commission's clear, unequivocal assertion that direct access customers choosing to leave the system are sophisticated parties who must, by virtue of their choices, remain responsible for all of the costs and risks their individual choices impose on the system and their fellow Oregonians.

3. A watered-down preferential curtailment policy does not protect customers.

At a time of increased risk and uncertainty in the Western Interconnection, efforts by Direct Access advocates to water down, minimize, undermine, or otherwise chip away at a utility's ability to rapidly implement preferential curtailment (1) when needed, (2) without undue operational burden, and (3) without fear of liability must be rejected across the board. Assuming the Commission adopts a policy of preferential curtailment, that policy must be designed to be maximally effective to ensure that any harm caused by a utility's provision of Provider of Last Resort service is minimized.

It is becoming increasingly difficult for a utility to plan for its own load. Staff is aware of the decreasing availability of regional capacity, the statutory requirements to rapidly decarbonize, and the existence of more extreme weather events and wildfires, as well as the challenging efforts needed to balance an increasingly complex set of loads and resources on the system. In the midst of all this, a utility's duty to offer Provider of Last Resort service means that a swath of unplanned load can land on the utility's system on any given day. A utility's obligation to serve customers who elected to leave, but now are suddenly back, may be harmless if the need arises in April, but it could cause enormous problems on an unseasonably hot day in July.

And as caps increase, the potential risks increase.

If the Commission countenances efforts by direct access advocates to water down, minimize, undermine, or otherwise chip away at a utility's ability to rapidly implement preferential curtailment as needed, a policy of preferential curtailment will essentially serve as nothing more than a curtain drawn over a reliability problem created by state regulatory policy.

B. "Curtailment" must mean near-instantaneous curtailment whenever curtailment is needed, with all the consequences that entails, and must include the protections needed to hold cost-of-service customers harmless from the return of unplanned load.

As PacifiCorp has noted, the purpose of preferential curtailment is to protect cost-of-service customers from the reliability risk caused by a direct access customer's unplanned return to the utility's system.

PacifiCorp has previously articulated a number of elements that must be part of an effective policy of preferential curtailment and will repeat some of them here:

1. Caps must be set for curtailable and non-curtailable customers.

PacifiCorp's proposed new section (4) proposes caps for both non-curtailable and curtailable load. Cap levels should be determined in the contested case.

For non-curtable load, a cap must be set at a level that minimizes the reliability risk to cost-of-service customers should non-curtable load return to the utility's system. By definition, the utility does not plan to have resources available to serve these customers. If these customers cannot be curtailed, an obligation to serve them can cause or exacerbate reliability risks to cost-of-service customers. This load should be tightly capped.

Section (4) also proposes a cap on curtable load. Preferential curtailment can certainly mitigate some risk of unplanned customer return. The ability to instantaneously shed unplanned load during a system emergency can mitigate reliability concerns for utilities—to a point.

As PacifiCorp has noted, cutting off and reenergizing pockets of customers throughout a utility's service territory may have system impacts not fully identified in this phase of the rulemaking. Moreover, the greater the size of the load that defects, the greater the risk that customers will indeed be curtailed should they return to a system not properly sized to serve them.

And more generally, the risks posed by a state utility system where Providers of Last Resort cannot and do not plan for a significant percentage of the state's electric load seems self-evident. Because the genie cannot be put back in the bottle, PacifiCorp's section (4) proposes caps on curtable load, in addition to non-curtable load, as a matter of good regulatory policy, consistent with the Commission's historical practice of mitigating unknown, or known but unquantifiable, risks to customers.² These caps would be reviewed periodically by the Commission.

2. A utility's curtailment authority must be swift, seamless, complete, and available when needed for system emergencies.

PacifiCorp's sections (4) and (5) add significant additional detail to Staff's Revised Proposal to ensure the basic principles for an effective preferential curtailment policy are effectuated.

- a. *The curtable customer must agree to be curtailed to allow the utility to avoid or mitigate Energy Emergency Alerts.*

Energy Emergency Alerts (EEA) are an objective measure of system need, as defined by the North American Reliability Corporation (NERC). An electric company must be able to curtail any curtable customers in the event of any EEA.

- b. *The electric company must be able to curtail any curtable customer within the time period needed to meet NERC standards for contingency reserves.*

Under NERC's reliability standards, an EEA1 is called when a utility is using its available resources to serve load and its NERC-mandated contingency reserves are at risk. An EE1 is evidence of stressed or abnormal system conditions. A utility may be able to continue serving unplanned load in this situation so long as curtable customers' load can be deemed both (1)

² See, e.g., *In re Portland Gen. Elec. Co. Request for a General Rate Revision*, Docket No. UE 335, Order No. 19-128 at 3 (Apr. 11, 2019) ("We routinely use caps and limits to place bounds on potential negative outcomes, particularly where future system impacts for a course of action are unknown or unknowable. Caps can act as a tool used to balance policy priorities and protect against potential negative impacts.").

eligible to meet the utility's contingency reserve requirements and (2) objectively available for that purpose.

To be eligible for NERC contingency reserve requirements under current standards, load *must be curtailable within ten minutes*.³ If an early-returning direct access customer's load is not available within ten minutes of notice, continuing to serve that customer's unplanned load imposes undue reliability risks on cost-of-service customers.

Programs that allow for curtailment upon longer notice periods may be useful for planned demand-side options as part of system-wide utility operations. But early returning direct access customers showing up on the system with unplanned load are differently situated from cost-of-service customers whom the utility has included in its planning.

The utility may call upon cost-of-service customers to reduce demand in a time of need, but *consumers injecting unplanned load onto the system* create far greater risk, and indeed, could impose unplanned load onto the system at precisely the same time that PacifiCorp is asking its cost-of-service customers to implement demand response measures in a pinch. Direct access customers that show up in the midst of a challenging situation and ask for power must provide strong assurances that they will not negatively impact reliability.

3. The curtailable customer must remain curtailable for the duration of the notice period required by program rules to allow the utility to plan for and acquire resources needed to serve that customer – that is, for the duration of the notice-of-return period.

Section (12) makes clear that a returning curtailable customer will be subject to curtailment for the duration of the notice-of-return period established by the Commission.

The rule makes clear that a customer returning to a utility's default supply service from an electricity service supplier ("ESS") is free to leave for another ESS for a three-month period after returning to default supply, so long as the customer has not given the utility a notice of intent to return. A preferentially curtailable consumer that stays on default supply for longer than three months will be deemed to have given the utility a notice of intent to return. To avoid disruption, a returning customer that has given the utility a notice of intent to return must stay with the utility until that notice period has run.

³ A ten-minute timeframe for curtailing is required for load to qualify as contingency reserves under NERC standards. Contingency reserves are intended "to ensure reliability under normal and abnormal conditions." See BAL-002-WECC-3—Contingency Reserve, R. 1.4, (available at <https://www.nerc.com/pa/Stand/Reliability%20Standards/BAL-002-WECC-3.pdf>) (last visited Feb. 3, 2023). Under NERC's Contingency Reserve rules, every utility serving as a balancing authority must maintain minimum contingency reserves at all times. *Id.* at R. 1. (NERC's standards allow an exception for the first hour following an event requiring activation of those reserves.) NERC's rules allow a utility to rely on load shedding as part of its contingency reserves. However, any load shedding must be deployable within ten minutes in order to be accepted as contingency reserves. *Id.* at R. 1.4. If NERC requires load to be curtailed within ten minutes in order to consider that curtailable load as an effective contingency reserve to maintain reliability in abnormal conditions, the Commission must apply that same standard when adopting its own curtailable load provisions.

4. Standards must be established to ensure utilities can curtail customers when needed without fear of liability.

Curtailing a customer is another phrase for cutting off the customer's electric service. Electricity is an essential service and a public good. Unless Commission policy clearly defines the utility's right and/or obligation to implement preferential curtailment, the utility may be hesitant to implement the policy for fear of liability. A policy intended to mitigate reliability risk that cannot be effectively deployed for fear of liability is poorly designed.

PacifiCorp's section (9) requires the development of clear, operationally workable standards that utilities can rely on when making difficult decisions about curtailment. These standards can be developed in the contested case and implemented in utility tariffs.

PacifiCorp's section (11) ensures that utilities will have clear guidance about the order and manner of customer curtailment, an operational element of a curtailment policy that must be crystal clear. PacifiCorp proposes that returning customers who have given the utility a notice of intent to return, and for whom the utility has begun planning, will be curtailed after customers for whom the utility has not begun planning.

PacifiCorp's section (5) requires curtailable customers to release the utility from liability for curtailment.

C. The concept of "Excess Generation," which PacifiCorp has renamed "Uncommitted Supply," must be clearly defined.

PacifiCorp's section (8) attempts to better define Staff's concept of "Excess Generation."

Regarding the policy of serving a customer with Excess Generation, the policy will be neither effective nor implementable as a practical matter unless it is clear what the definition encompasses, and unless the question of whether such supply is available or not is ascertainable by utility personnel in real time.

As a starting point, PacifiCorp proposes renaming the concept to "Uncommitted Supply," a phrase that may better capture its intended meaning. Generation is rarely "excess." Power that can be generated in excess of load and other committed needs is often a valuable asset that can be sold into the market for the benefit of cost-of-service customers. Moreover, that "supply" may take many forms.

Here, PacifiCorp proposes the term "Uncommitted Supply" and adds specificity intended to help better define the term.

D. To the extent utilities are able to provide service to early returning customers with Uncommitted Supply, cost-of-service customers must be held financially harmless from the provision of that Uncommitted Supply to early-returning customers.

Staff's Revised Proposal includes a specific pricing provision for customers returning to Default Service.

PacifiCorp's proposed section (10) adds the regulatory principle that appears to drive Staff's pricing proposal; specifically, that early returning customers that can be served with Uncommitted Supply will be charged rates for default supply service that hold cost-of-service customers harmless from the provision of that service.

The intent of adding this principle in the rules is to ensure that any future changes to rate schedules applicable to such customers, or any schedules that may someday be created or deemed appropriate to apply to them, adhere to this cornerstone principle.

Staff states that during the time equal to the utility's notice of return period, the customer would remain on default supply while the utility plans to serve them. Staff also recommends that a customer may opt to return to direct access service during this time but must pay transition charges that recover all the costs required to plan for them. It remains unclear to PacifiCorp why, under the proposed paradigm, transition charges would necessarily be required in this circumstance, particularly if the customer had completed five years of transition adjustments under permanent opt-out.⁴

E. Implementation procedures should be developed during the contested case or compliance phase of this docket, and rules should not be effective until that process is complete.

Section (5) makes clear that a utility will establish implementation procedures in tariffs to be reviewed by the Commission.

The Commission's preferential curtailment rules should not become effective until such tariffs are filed and approved by the Commission.

F. Demand response programs and curtailment of unplanned load are different and should not be conflated.

PacifiCorp would reiterate its prior comments that demand response programs are different from the preferential curtailment policy being considered here. Demand response programs are generally used by a utility's merchant function as supply options, modeled as part of integrated resource planning. They typically allow cost-of-service customers to voluntarily reduce their loads by a small amount, or to interrupt their load for a limited period of time in advance of a system emergency or in response to high wholesale market conditions. Moreover, the utility's request for the demand reduction can often be overridden by the customer.⁵

⁴ Staff's Revised Proposal at 2.

⁵ To the extent the Commission implements a policy of preferential curtailment that is swift, seamless, complete, and available as needed to mitigate risk caused by returning customers, PacifiCorp does not in theory object to the Commission's calling referring to preferential curtailment as a "demand response" program, though it should be made clear that it would be conceptually different from a demand response program intended to provide *planned resources* to *planned customers*. On the other hand, if Staff intends to use the term "demand response" to inject concepts that water down, minimize, or add unnecessary complexity to a policy of preferential curtailment, which would undermine a utility's ability to rapidly curtail all curtailable load as needed (such as making the curtailment slow, partial, or discretionary), PacifiCorp is strongly opposed.

As PacifiCorp noted above, the utility may call upon cost-of-service customers to reduce their demand through a suite of voluntary programs of one type or another. But these customers have been included in the utility's load forecasts and their needs have been planned for. Because their load is planned for, these customers contribute to reliability; they do not create risk.

By contrast, early returning direct access customers add unplanned load to the system. They do not help alleviate risk; they create additional risk. Their agreement to be curtailed is simply an agreement to mitigate the very problems they cause. Any policy of preferential curtailment should be designed to effectively mitigate that risk.

In short, preferential curtailment is a radical policy solution to the challenging Provider of Last Resort issue, one that requires unplanned consumer load that causes or exacerbates reliability issues to simply be moved offline as quickly as possible.

G. Conclusion

PacifiCorp offers its redlines to help advance this issue and looks forward to discussing next steps in this docket.

Sincerely,



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Preferential Curtailment

- (1) “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 consumer’s direct access program obligations. The electric company will curtail such consumers as necessary to protect cost-of-service customers from the impacts of the returning consumer's unplanned load.
- (2) The Commission will establish notice requirements for long-term direct access consumers sufficient to allow the electric company to plan for and acquire firm capacity for returning consumers (“Required Notice”).
- ~~(1)~~(3) Except as provided in sections (64), (5) and (86), each electric company shall ~~offer~~provide preferential curtailment to eligible New Large Load Program participants and long-term opt-out direct access consumers, subject to the limitations in this section.
- (4) The Commission will establish caps on direct access loads adequate to protect cost-of-service customers from ~~During the risks and costs associated with the return of an annual election window, consumers electing to transition to direct access and current direct access consumers to the utility’s system~~ customers will elect.
 - (a) The cap on ~~non-curtable~~ load will be set at a level that minimizes the reliability risk ~~whether to cost-of-service customers should be curtable or non-curtable load in the event they return to the electric company’s system;~~
- ~~(2)~~(5) The cap on curtable load will be set at a level that minimizes the reliability risk, uncertainty, planning risk, and potential operational impacts associated with (1) energizing and de-energizing portions of the electric company’s system operations as part of system management due to return of preferentially curtable early-returning consumers; or (2) defection of an amount of consumer load for which the electric company remains the ~~emergency default supplier~~ service.
 - (a) The caps established under this section may be reviewed by the Commission periodically in a manner to be determined by the Commission.
- (6) Procedures for Implementation of Preferential Curtailment.
 - (a) The Commission will ~~may~~ establish threshold eligibility criteria for consumers seeking to become preferentially curtable. These criteria will include but not be limited to:
 - i. Size thresholds;
 - ii. For critical facilities, criteria for demonstrating to the Commission’s satisfaction the existence of resilient back-up generation sufficient to mitigate the public policy risks associated with curtailment of such facilities;
 - iii. [other]

Commented [PAC1]: PacifiCorp has eliminated, in its proposed rules, the predicate that an ESS must "fail" for these rules to apply to early returning customers.

A customer may rely on POLR service for any number of reasons. The ESS could stop providing service because the customer does not pay its bills. Or the ESS could determine it is not profitable to provide service and breach its contract or exit the Oregon market, etc. The risks of POLR service to cost-of-service customers are the same whether the ESS fails or not.

Commented [PAC2]: Cap levels should be determined in the contested case.

Commented [PAC3]: This could be housed in the section of the rules addressing elections, perhaps a more logical place to keep elections criteria better organized.

Commented [PAC4]: These issues should be developed in the contested case and/or as part of utility compliance filings.

(b) Each utility will develop a process for determining eligibility, determining costs of infrastructure, collecting those costs, etc., to be reviewed and approved by the Commission.

Commented [PAC5]: These issues should be developed in the contested case and/or as part of utility compliance filings.

(c) A preferentially curtailable consumer must provide notice to the utility of the consumer's election to be deemed curtailable at the time a consumer makes its ~~a cap on non-curtable~~ direct access election. A consumer that makes no such election will be deemed to be non-curtable.

Commented [PAC6]: This provision could be housed or repeated in the section of the rules addressing elections.

(d) Consumers already on New Load Direct Access service or long-term direct access service must make the election contemplated by subsection (c) during the Election Window in the year following the year in which this rule becomes effective.

Commented [PAC7]: This provision is intended to give legacy participants a minimum of one full year to make a decision about whether they wish to be curtable.

(7) An electric company will deny an application for preferential curtailment unless:

(8) The consumer agrees to be curtailed in a manner that holds cost-of-service customers harmless from the potential reliability impacts of the returning consumer's unplanned load, including the following:-

1. The electric company may curtail the consumer as needed to plan for and meet the electric company's near-term firm load service and contractual obligations;
2. The electric company may curtail the consumer as needed to avoid or mitigate Energy Emergency Alerts declared by the electric company's Reliability Coordinator;
3. The electric company must be able to reliably curtail the consumer within the time period needed to meet North American Electric Reliability Corporation standards for Contingency Reserves.

(b) It is technically feasible to curtail a consumer consistent with section (6)(a), above;

(c) The consumer agrees to pay for the infrastructure needed to implement curtailment; and

(d) The consumer agrees to hold the electric company harmless from all liability or damage caused by curtailment.

(9) An electric company may collect from a direct access consumer electing preferential curtailment ~~all a reasonable costs necessary to charge from a direct access consumer to recover necessary costs for system upgrades that operationalize preferential curtailment consistent with this rule.~~

Commented [PAC8]: The timing and method of collection should be determined in the contested case.

(10) ~~A of that consumer, using a Commission approved methodology. Consumers who elect to be curtable will not be considered preferentially non-curtable from an operational perspective until the system upgrades are implemented and curtailment is operational.~~

Commented [PAC9]: The timing and method of collection will be determined in the contested case.

(a) The consumer has made a timely application for and the An electric company has approved an application for preferential ~~will not preferentially curtail non-residential direct access consumers that have elected to be non-curtable during the election period, are infeasible to curtail, or whose curtailment;~~

(b) The consumer has paid for ~~would negatively affect~~ the infrastructure necessary to implement preferential curtailment;

~~(5)~~(11) The electric company has completed installing the equipment necessary to implement preferential curtailment, using reasonable efforts to ensure the installation occurs as soon as reasonably possible ~~system's reliability~~.

(12) If a preferentially curtailable consumer returns to default supply (OAR 860-038-0280) prior to an ESS is no longer providing Required Notice ~~service~~, the electric company must attempt ~~make best efforts to serve that a returning curtailable consumer with Uncommitted Supply before preferentially curtailing the consumer.~~

~~(6)~~(13) "Uncommitted Supply" is generation reasonably available to the electric company in the market purchases or through the electric company's own resources ~~excess generation. Excess generation must be generation that is beyond any requirements to serve the consumer's unplanned cost of service load. Uncommitted Supply excludes any generation needed, to comply with reliability standards, or to meet the electric company's firm load service obligations (including anticipated near-term load obligations), contractual obligations, and/or federal reliability standards and tariffs. related to contingency reserves.~~

(a) For multi-jurisdictional utilities, this determination will be made in a manner that holds customers in other jurisdictions harmless from Oregon's implementation of its direct access policy.

(14) The Commission will establish clear, objective criteria the electric company may use to demonstrate that it sought to serve a preferentially curtailable consumer with Uncommitted Supply before curtailing that consumer. An electric company that follows these criteria will be deemed to have discharged its obligation to attempt to serve a preferentially curtailable consumer with Uncommitted Supply before curtailing that consumer. These criteria:

(a) Must not impair the electric company's ability to commit appropriate resources to reliability or load-service needs of cost-of-service customers in a time of system need; and

(b) Must be implementable as a practical matter by grid management personnel.

~~(7)~~(15) If a preferentially returning curtailable consumer is served with Uncommitted Supply through market purchases or excess generation, the consumer will be charged rates for that service that hold cost-of-service customers harmless from the provision of that Uncommitted Supply, including the lost opportunity costs for cost-of-service customers as defined in OAR 860-038-0280 (3)(b) or OAR 860-038-0250.

~~(8)~~If Uncommitted Supply an ESS is not no longer providing service, and neither market energy nor excess generation is available to serve an early-returning curtailable consumer, the electric company may preferentially curtail the returning ~~nonresidential direct access consumers of that ESS that elected to be curtailable.~~

Commented [PAC10]: These issues should be developed in the contested case.

~~(16) A curtailable consumer as needed that returns to hold cost-of-the electric company's service customers harmless from the reliability impacts of on less than the consumer's unplanned load.~~

~~(a) Preferentially curtailable consumer time for whom the electric company has not begun planning will be curtailed in an order and in a manner consistent with the utility's Commission-approved tariffs, in a manner that is operationally workable for notice of return under the electric company;~~

~~(b) Preferentially curtailable consumers who have notified the electric utility of their intent to return to cost-of-service, and for whom the electric company has begun planning, will be curtailed in an order and in a manner consistent with the utility's Commission-approved tariffs; provided, however, that such consumers will be curtailed only after the electric company has curtailed consumers for whom the electric utility has not begun planning.~~

~~(17) A preferentially curtailable consumer company's direct access program tariff shall be subject to preferential potential curtailment for a period equal to the consumer's remaining time for notice of return.~~

~~(18) This provision does not limit a consumer's right to return from default supply to direct access, so long as (1) the consumer has not notified the utility of its intent to return to the utility; and (2) the consumer returns to direct access within three months of returning to the electric company's service; emergency default service or standard offer service to direct access.~~

~~(a) If a consumer remains on default supply for longer than three months, the consumer will be deemed to have provided a notice of return and the utility will begin planning for that consumer.~~

~~(b) To avoid undue disruption in the utility's planning and operational efforts, a consumer that has provided a notice of return to the utility's service may not return to direct access for the duration of the Required Notice period.~~

~~(19) If a non-curtailable consumer returns to the electric company's service without Required Notice on less than the time for notice of return under an electric company's direct access program tariff, the electric company shall charge the non-curtailable consumer the greater of the incremental capacity and energy costs or retail energy costs required to serve the consumer on less than notice of return. The consumer must remain on default supply service for the remaining time for notice of return, except as defined in OAR 860-038-0290(13)(a-1).~~

~~(20) This rule will become effective after the Commission's approves utility tariffs implementing its provisions.~~

~~(11) If a non-curtailable consumer on an electric company's default supply option elects to return to direct access service during the period equal to the remaining time for notice of return, the consumer must pay transition charges that recover the electric company's costs of planning to serve that consumer~~

Commented [PAC11]: If the consumer has provided no notice, the Required Notice period starts when the consumer returns. If the Required Notice period is four years, and the consumer provides notice one year before returning, the consumer will be subject to preferential curtailment for the remaining three years.

[860-038-0590](#)

Transmission and Distribution Access

- (1) An electric company may be relieved of some or all of the requirements of this rule by placing its transmission facilities under the control of a regional transmission organization consistent with FERC Order No. 2000 and obtaining Commission approval of an exemption.
- (2) An ESS may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs. The electric company shall coordinate the filings of these tariffs to ensure that all retail and direct access consumers are offered comparable services at comparable prices.
- (3) **Except as otherwise directed by OAR 860-038-0290**, each electric company shall provide nondiscriminatory access to transmission, distribution, and ancillary services, including transmission into import-limited areas and local generation resources within import-limited areas, to serve all retail consumers. An electric company shall not give preference or priority in transmission and distribution pricing, transmission and distribution access, or access to, pricing of, or provision of ancillary services and local generation resources, to itself or its affiliate relative to persons or entities requesting transmission or distribution access to serve direct access consumers. No preference or priority may be given to, nor any different obligation assigned to, any consumer based solely on whether the consumer is purchasing service from an electric company or an ESS.
 - (a) Any transmission or distribution capacity to which an electric company has entitlements, by ownership or by contract, for the purpose of serving its Oregon load shall be made available to an electric company and ESSs that are serving such load on at least a pro rata basis. An electric company shall describe in its tariff filings how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if:
 - (A) Access to the electric company's transmission or distribution facilities or entitlements is restricted by contract or by regulatory obligations in other jurisdictions; or
 - (B) If providing transmission or distribution service on a pro rata basis would result in stranding generating capacity owned or provided through contract by the electric company;
 - (b) Except for those ancillary services required by FERC to be purchased from an electric company, an ESS may acquire, on behalf of the retail loads for which it is responsible, all ancillary services required relative to the transmission of electricity by any combination of:
 - (A) Purchases under the electric company's Open Access Transmission Tariff;
 - (B) Self-provision; or
 - (C) Purchases from a third party;
 - (c) Energy imbalance obligations, including the pricing of imbalances and penalties for imbalances, shall be developed to reasonably minimize imbalances and to meet the needs of the direct access market environment. The electric company shall address such energy imbalance obligations in its proposed FERC tariffs. Energy imbalance obligations imposed upon ESSs, including the entity serving the

Commented [PAC12]: PacifiCorp does not believe this is necessary; if a customer elects to be curtailed, the limitation on that customer's access to the system would presumably not be considered "discriminatory."

standard offer load, and consumers purchasing service from the electric company, shall comply with the following:

- (A) The obligations shall impose substantively comparable burdens upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, and shall not unreasonably differentiate between consumers that are entitled to direct access on the basis of customer class, provider of the service, or type of access;
 - (B) The obligations shall recognize the practical scheduling and operational limitations associated with serving retail consumer loads in the direct access environment, but shall require ESSs, including the entity serving the standard offer load, to make reasonable efforts to minimize their energy imbalances on an hourly basis;
 - (C) The obligations shall be designed with the objective of deterring ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company from burdening electric system operation or gaining economic advantage by under-scheduling, over-scheduling, under-generating or over-generating. The obligations shall not be punitive in nature; and
 - (D) The obligations shall enable an electric company and ESSs, including the entity serving the standard offer load, to settle for energy imbalance obligations on a financial basis, unless otherwise mutually agreed to by the parties.
- (d) Where local generation is required to operate for electric system security or where there is insufficient transmission import capability to serve retail loads without the use of local generation, the electric company shall make services available from such local generation under its ownership or control to ESSs consistent with the electric company's provision of services to standard offer consumers, residential consumers, and other retail consumers. The electric company shall also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;
 - (e) The electric company's tariffs shall specify prices, terms, and conditions for scheduling, billing, and settlement. Other functions may be specified as needed;
 - (f) An electric company's tariffs shall include a dispute resolution process to resolve issues between the electric company and the ESSs that serve the retail load of an electric company in a timely manner. Such processes shall provide that unresolved disputes related to such retail access matters may be appealed to the Commission.
- (4) If adherence to OAR 860-038-0590 requires FERC approval of tariff or contract provisions, the electric company must petition FERC for the approval of the tariff or contract provisions within 90 days of the effective date of this rule. Subsequent tariffs or contracts requiring FERC approval will be made in a timely manner.