



Revised Recommendation to Move to a Formal Rulemaking

AR 651

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October 4, 2022**

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Revised rule language and guidance for:

- Preferential Curtailment / Provider of Last Resort
- DA Program Caps
- Non-bypassable Charges
- ESS Emissions Report – Confidential Information

Preferential Curtailment

(OAR 860-038-0290)

Staff's curtailment framework

Encourages the ESS and customer to be resource adequate

Limits duplicate capacity investments

Protects reliability if an ESS cannot serve customer load or in larger market failures

Preferential Curtailment Rules

(OAR 860-038-0290)

- IOUs will preferentially curtail DA customers who return when their ESS cannot serve them.
- IOU must use any available market purchases or excess generation before resorting to curtailing.
- IOU will collect a charge from the DA customer for the system upgrades that enable preferential curtailment

Preferential Curtailment Rules

(OAR 860-038-0290)

Exceptions

- An IOU will not preferentially curtail if it is infeasible (cost, engineering) or impacts system reliability.
- In this scenario, the IOU will collect charges from the non-curtailable customer to invest in capacity for their potential return in a default event.

Preferential Curtailment

(OAR 860-038-0290)

Key Feedback

- Requests for additional process and discussion before a formal rulemaking.
- Allow a customer to find service from a different ESS before curtailment
- DA customers should not pay for the curtailment infrastructure
- Discuss contractual curtailment where customer self-curtails or faces penalties

DA Program Caps

Policy framework that outlines the criteria for how the Commission should make determinations on caps:

The Commission may preserve, adjust, or impose a cap if an increase in DA load:

- *Compromises system reliability*
- *Shifts an unacceptable amount of costs to COS customers*
- *Poses undesirable long-term financial impacts on COS customers or the electric system*
- *Poses other unmitigated risk to COS customers*

DA Program Caps

Key Feedback

- The DA customer should bear the burden of proof to demonstrate there is no unwarranted cost shifting from exceeding a cap.
- The guidance shouldn't be included in **rules** but is a good starting point for the contested case phase.
- If DA load poses cost shifts/risks, implement a transition charge that flows back to COS customers the costs incurred to mitigate these risks, not a cap.

Non-bypassable Charges

(OAR 860-038-0170)

- Some revisions in the definition and criteria that resulted in greater consensus among parties.
- *“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.”*

Key Feedback

- Differentiate between New Load and Long-Term DA customers

ESS Emission Planning Reports

(OAR 860-038-0405)

- Staff added an “availability of information” section based on joint language from certain parties.
- Staff and CUB are the two parties with access to \$/MWh pricing information.
- Non-market participants have access to action plans, load forecasts, and summaries of resources and generation.

Key Feedback

- Equal level of public scrutiny for ESS reports as for the IOU’s Clean Energy Plans
- Requests for the first report to begin earlier in 2024, not 2027

QUESTIONS?



Preferential Curtailment Rules

(OAR 860-038-0290)

- (1) Except as provided in sections (2) and (5), each electric company shall provide preferential curtailment of nonresidential direct access consumers.
- (2) If an ESS is no longer providing service, the electric company must attempt to serve the returning consumer with market purchases or the electric company's excess generation.
 - (a) If served through market purchases or excess generation, the returning consumer will be charged rates for that service as defined in OAR 860-038-0280 (3)(b).
- (3) If an ESS is no longer providing service, and neither market energy nor excess generation is available, the electric company may preferentially curtail returning nonresidential direct access consumers of that ESS.
- (4) The electric company may collect a reasonable charge from a consumer to recover necessary costs for system upgrades that operationalize preferential curtailment of that consumer, using a Commission approved methodology.
- (5) An electric company will not preferentially curtail non-residential direct access consumers if it is infeasible to do so or curtailment would negatively affect the electric system's reliability.
 - (a) Where an electric company will not enact preferential curtailment, the electric company will plan for and acquire capacity to account for a direct access consumer's potential return to the electric company's service.
 - (b) The electric company will design tariffs to collect charges from the direct access consumer that only recover the costs of the capacity investment and the generation that serves that consumer.

Non-bypassable Charges Rules

(OAR 860-038-0170)

(1) "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. 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.

ESS Emission Planning Reports Additions

(OAR 860-038-0405)

(8) Availability of Information:

- (a) The following information shall be available for review only by Qualified Statutory Parties that have executed a modified protective order:
 - (i) Information regarding an analysis of the \$/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for each of the next 3 years, as required by Section 3(f).
- (b) For purposes of this Section, Qualified Statutory Parties means Commission Staff and the Citizen's Utility Board.
- (c) The following information shall be available for review only by Non-Market Participants that have executed a modified protective order:
 - (i) Action plan that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology, as required in Section 3(e);
 - (ii) Information regarding the load forecast for each of the following three consecutive years, aggregate for all Oregon Direct Access customers, as required by Section 3(c); and
 - (iii) The summary of the specific electricity-generating resources and MWh generation from those resources, as required by Section 3(b).
- (d) For purposes of this section, Non-Market Participants includes Commission Staff, the Citizen's Utility Board, and non-profit organizations engaged in environmental advocacy that do not otherwise participate in electricity markets.