

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of	)	UM 1837
	)	
The PUBLIC UTILITY COMMISSION OF OREGON	)	OPENING COMMENTS OF CALPINE ENERGY SOLUTIONS, LLC
	)	
Investigation into the Treatment of New Facility Direct Access Load	)	
_____	)	

**INTRODUCTIONS AND SUMMARY**

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits its opening comments to the Public Utility Commission of Oregon (“Commission”) in this investigation. Calpine Solutions recommends that the Commission develop a program that allows new customers to obtain direct access service without being subject to the full amount of transition charges and the limited time available during the annual enrollment windows that apply to the terms of direct access service for existing customers.

This proceeding is an outgrowth of the Oregon legislature’s recent consideration of Senate Bill 979. That bill proposed to exempt new customer loads from payment of transition charges and other restrictive elements of direct access programs for existing cost-of-service customers if the new customer obtained 100 percent renewable energy from an electricity service supplier under Oregon’s direct access law. As noted in our previous filings, it appears that legislators were interested in implementing such a program but saw no need for new legislation.

We would also like to again highlight the purpose of the existing direct access law. The Legislative Assembly declared that that “retail electricity consumers that want and have the

technical capability should be allowed, either on their own or through aggregation, to take advantage of competitive electricity markets as soon as is practicable.” Or Laws 1999, ch 865 at preamble. The law specifically instructs the Commission to develop policies to “eliminate barriers to the development of a competitive retail market structure” and “to mitigate the vertical and horizontal market power of incumbent electric companies \* \* \* .” ORS 757.646(1). Given these legislative directives and robust interest in direct access from commercial and industrial customers, it is reasonable to develop a direct access program that will promote economic development by attracting new businesses that would otherwise not locate to Oregon, as Senate Bill 979 proposed and as this investigation will hopefully conclude.

Against this backdrop, Calpine Solutions recommends that the Commission implement a policy that helps eliminate economic barriers to direct access service for new customers. The primary barriers to direct access that currently exist are the stranded cost charges (referred as “transition charges” in Oregon law) and the limited time available during the enrollment windows for eligible customers to commercially transact. These requirements exist in part to address a need to protect remaining cost-of-service customers from paying for the existing generation commitments made by the utility prior to the time that the direct access customer elects to buy generation services from the market. However, in the case of a *new* customer that elects to purchase generation directly from the market and not from the utility from day one, there is no need for limited enrollment windows and the current level of transition charges. The remainder of these comments will respond to the discrete issues posed by Staff to the parties in this process.

## COMMENTS

### **1. Should the Commission exercise its discretion and consider reduced or eliminated transition charges for new load?**

Yes. The Commission should exercise its discretion to reduce or eliminate transition charges for new customer load. Doing so is necessary to remove the unreasonable economic obstacles to direct access, as required by ORS 757.646(1), and to remain competitive with other states that are offering such options to new customer loads to attract economic development.

### **2. What constitutes new customer load, and what actions can invalidate new customer status?**

It would be reasonable to define new customer load, eligible for the program, to include both an entirely new customer relocating into the utility's territory or an expansion of an existing customer's facilities that is tied to notable new infrastructure at the facility. The intent in both circumstances is to make the program available to new loads that might not relocate or expand into the utility's service territory *but for* the opportunity to enter into the direct access program for new customer load without large transition charges and limited enrollment windows and capture the current benefits of market-priced electricity.

Calpine Solutions offers the following description of these two scenarios: (1) a new load with a new point of delivery for a new customer at an existing or new facility that was not connected to the utility's system for at least one year prior to the direct access election; or (2) an increase in load for an existing customer already taking bundled service from the utility at an existing facility if such new load is associated with a significant infrastructure expansion at the facility that would require planning and upgrades to the infrastructure by the utility.

**3. What types of new customer direct access loads can utilities accurately plan for?**

Based on discussions at the workshop on load planning, the utilities should be able to plan for new customer direct access loads without incurring additional generation costs to serve such new loads. Many large, new customers already must provide significant advance notice to the utility simply as a logistical matter to ensure that the utility can complete the interconnection and distribution system upgrades necessitated by their loads and finalize a master services agreement with the utility for distribution service. The program could require the new customer make an election to enroll in a direct access program instead of purchasing generation services from the interconnecting utility, which should provide the utility with the time to adjust its load forecasts used for planning purposes and avoid the acquisition of any generation commitments to serve the new customer load.

**4. Do utilities currently have investments or costs rendered un-economic as a result of new direct access customers?**

No. There is no evidence to conclude that the utilities have already incurred costs to serve customers who do not currently exist on their distribution system. It would appear to be imprudent for the utility to acquire a new generation resource without adequate assurance there would be new load to purchase that service. It is possible that reducing the amount of incremental generation resources the utility must acquire to serve new load will actually benefit existing customers by reducing the amount of new incremental plant the utility must construct, which, generally speaking, would otherwise increase the average costs across the system.

**5. Can utilities plan in a manner that allows new customer direct access without adverse impacts on cost-of-service customers?**

Yes. As noted above, based on information presented at the workshop, the utilities

should be able to avoid making a commitment to new generation investments tied to new loads if the new load provides adequate notice of commitment not to use the utility's generation services. In the case of the customer locating at point of delivery that is not currently taking service, this could easily occur in conjunction with the process that is already in place to ensure that the new customer receives distribution service from the utility.

**6. Can utilities treat new customers differently from existing customers without discriminating?**

Yes. This question has been thoroughly briefed by the parties already. Put simply, the new customer loads are not similarly situated to the existing customer loads, and therefore no unlawful discrimination would occur by offering the new customer loads a different economic construct under the direct access laws.

The Commission's precedent and requirements for special contracts illustrate this principle. In that circumstance, one of the key factors to a customer's entitlement to a special contract is that the customer must have "price competition" or a "service alternative." ORS 757.230(1). In that context, the alternative envisioned was through self-generation or through another electric utility, even perhaps through the act of municipalization. *See Wah Chang v. PacifiCorp, dba Pacific Power*, OPUC Order No. 09-343 (Sept. 2, 2009). As the Commission has noted, the "challenge facing the utility is either to lose the load entirely or price its service to keep the load at some profit." *Id.* at 22 (quoting Testimony, House Energy and Environment Committee, House Bill 2144, Ex I (Mar 30, 1987)). Thus, there is precedent outside the direct access context for the concept that customers with service alternatives are not similarly situated to existing customers in the classic sense. *See also id.* at 21 (noting, due to the option of municipalization, "Wah Chang, unlike most customers, was not a captive customer of the utility

that serves it”).

The same principle applies here with more force. The utility would not be *losing* an existing load due to the program – but for the program it is reasonable to conclude the customer may locate its new load in an entirely different state that provides viable alternatives that meet its service needs, including access to market electricity prices. Thus, the Commission should determine as a matter of law and policy that it is reasonable to conclude no unlawful discrimination occurs in this set of circumstances.

**7. Do transition adjustment charges mitigate risk to utilities and cost-of-service customers associated with the Provider of Last Resort requirements?**

The risk to the utilities should be fully mitigated by the existing mechanisms that address provider of last resort requirements. Calpine Solutions proposes that the new customer loads program have provider of last resort terms similar to the current long-term opt-out programs, which require the customer to provide significant notice to return to cost-of-service generation rates. If the customer needs to buy generation services from someone other than its electricity service supplier in an emergency, the utility may meet its obligation as the provider of last resort by providing a market index rate. In other words, the customer would not have the right to immediately return to the utility’s cost-of-service portfolio of generation resources. There is no apparent harm to the utility or its remaining customers if the direct access customer cannot immediately return to cost-of-service rates.

**8. What parameters can be placed on the type of new load receiving altered transition adjustment treatment to minimize cost shifting?**

There is no need to apply transition charges to the new customer load if the utility receives adequate notice to ensure that it will not acquire new generation resources to serve that

customer. As we understand the situation, the utilities do not acquire new generation commitments to serve projected growing loads in the time frame prior to when such notice could easily be given by new loads during the process of establishing distribution service. Thus, the parameters that would apply would include the amount of advance notice provided to the utility, and a binding commitment be made by such notice. Calpine Solutions preliminarily proposes that six months advance commitment to interconnect as a direct access customer in the program should be sufficient to allow the utility to adjust its forecasts and avoid acquisition of new generation resources to serve that customer. Six-months of advance notice to enter a direct access program has been deemed to be an acceptable time period by the California Public Utilities Commission when faced with a similar utility planning exercise. *See Rulemaking regarding whether, or subject to what Conditions, the suspension of Direct Access may be lifted consistent with Assembly Bill IX and Decision 01-09-060, CPUC Rulemaking Docket 07-05-025, CPUC Decision 11-12-018, slip op. at pp. 49-51, 2011 Cal. PUC LEXIS 529 at \*\* 73-77 (Dec. 1, 2011).*

**9. What are the consequences of modifying transition adjustments for new customer on cost-of-service customers?**

See the response to question 4.

**10. What provider of last resort obligations should be imposed on the utility for new direct access load?**

As discussed above in response to question 7, there should be no entitlement to return from the direct access program to cost-of-serve rates without adequate advance notice from the customer to the utility. Until such notice period is complete, the customer may take service on a market index rate provided by the utility. The notice utilized in Portland General Electric's five-

year opt-out program of three years is more than adequate in this circumstance and is significantly more advance notice than the utility receives for a new customer interconnecting to the system for the first time. *See* PGE Schedules 485, 489, 490, 491, 492, and 495. The utility is the logical provider of last resort since it has a statutory obligation to serve all customers in this territory, but at the same time the Commission can limit the right of direct access customers to return to the utility's cost-of-service rates. ORS 767.622 & 757.757.603(3)(b).

**11. In the event that new direct access load wants to return to cost of service rates, how should that be structured?**

See response to questions 7 and 10.

**12. Are there benefits to Cost of Service customers from Direct Access customers paying distribution charges?**

Yes. The new customer will pay the same distribution rates whether it takes direct access generation service or cost-of-service generation service. Thus, there are benefits to the new customer contributing to the utility's overall distribution costs so long as the customer does not cause incremental upgrades to the system that are assigned to other customers. Based on the information provided thus far, the new customers should help contribute revenue to existing fixed distribution costs and should therefore reduce average costs of the same charged to other customers.

**13. Should the source of energy (green energy vs thermal/market) be considered in a potential new program for new load and Direct Access?**

No. Under existing law, the direct access customers in the program would be required to purchase energy that meets the same renewable portfolio requirement as other direct access customers, which is roughly equivalent to the requirements that would apply if the customer



purchased generation through its utility. *See* ORS 469A.065. Although Senate Bill 979 was proposed to limit such a program to customers who purchase a larger increment of renewable energy, there does not appear to be any provision in existing law allowing for this distinction. In practice, however, it would be expected that many new enrollees in the program would be interested in the opportunity to purchase renewable energy in amounts exceeding the current mandated percentages. Thus, implementation of the program would result in no reduction in use of renewable energy in Oregon, and it would likely result in an increase in use of renewable energy in Oregon.

**14. Should a new program for new direct access load be included in the current program caps for existing direct access programs?**

No. The basis for the caps in the existing long-term direct access programs is to mitigate against the potentially adverse impacts a large amount of existing load *leaving* the utility's cost-of-service rates and stranding existing generation commitments all at one time or within a short period of time, depriving the utility of the ability to restructure their power portfolio. However, this concern is inapplicable where the customers entering the program are not already *existing* customers and have not, therefore, caused the utility to incur any of the generation costs that would be theoretically stranded. In this context, a cap would simply be an arbitrary and anticompetitive implement that would artificially limit participation in the program and artificially limit customer participation rate.

**CONCLUSION**

For the reasons explained above, Calpine Solutions recommends that the Commission develop a program that allows new customers to obtain direct access service without being subject to the full amount of transition charges and the limited time available during the annual

enrollment windows that apply to the terms of direct access service for existing customers.

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