BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

AR 614

IN THE MATTER OF RULEMAKING RELATED TO A NEW LOAD DIRECT ACCESS PROGRAM	)))))))	CALPINE ENERGY SOLUTIONS, LLC'S SUPPLEMENTAL COMMENTS ON THE OREGON PUBLIC UTILITY COMMISSION'S PROPOSED RULES

On May 23, 2018, Calpine Energy Solutions, LLC ("Calpine Solutions") submitted comments to the Public Utility Commission of Oregon ("Commission") in response to a Staff Report circulated to stakeholders on May 17, 2018. The Staff Report contained a draft of proposed rules relative to new large load that would apply only to new loads in excess of 10 average megawatts ("aMW"). Subsequent to the filing of those Comments the Commission, on May 25, 2018, issued a formal Notice of Proposed Rulemaking containing Staff's draft rules.

The formal notice of rulemaking contains proposed rules that are essentially identical to the proposed rules that staff has previously circulated. Therefore, Calpine Solutions reiterates its initial comments for the Commission's consideration and incorporates those comments by reference herein. A copy of Calpine Solutions' initial comments is attached hereto as Attachment No. 1.

Although the rules published by the Commission for comment do not differ from the initial draft circulated by Staff (and upon which Calpine Solution's initial comments were based) Calpine appreciates the opportunity to offer these supplemental comments that are based on

information gleaned during stakeholder workshops and discussions initiated by the Commission's Staff.

Transition Charges 860-038-0720(1)(a):

As observed in Calpine Solutions' initial comments there is no cost basis for the imposition of a charge equal to 25-percent of a utility's fixed generation charges. Informal discussions with Staff and other stakeholders appear to have substantiated Calpine Solutions' initial comments on this important issue. To the extent the 25-percent charge is not justified based on verifiable costs it should be rejected.

Existing Load Shortage Transition Charge:

All parties agree that it is in the public interest to prevent shifting load from an existing facility on cost-of-service rates to a new facility on direct access within the same utility's service territory in order to avoid normally applicable transition charges. During the stakeholder meetings the complexity of the currently proposed rule was discussed extensively without reaching a consensus resolution. Calpine Solutions' initial concerns (see attached Attachment 1) regarding workability of this proposed rule remain valid. A reasonable and workable alternative to the complex load shifting provisions in the proposed rule is to require customers taking service under the new large load direct access program to execute a legally binding affidavit affirming that their participation in the program will not include load shifting from other customer owned cost-of-service accounts in violation of the intent of the proposed rule. Calpine Solutions represents that the 'affidavit' approach to this issue has been successfully utilized in other jurisdictions which have addressed similar concerns.

Return to Cost-of Service Rates:

The proposed rule's additional charge for new load direct access customers who return to cost-of-service rates is also addressed in Calpine Solutions' initial comments. There is simply no need for specific provisions in the rule addressing this issue other than to require returning direct access customers to pay (or receive the benefits) of all objectively adjudicated costs/benefits associated with its return to cost-of-service rates. To be fair, however, to the extent a returning direct access customer has already been assessed a 25-percent charge for participation in this program, it should be credited by that same amount paid (with accrued interest) as a credit upon its return to cost-of-service rates.

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ATTACHMENT 1: Calpine Solutions' comments on Staff's Draft Rules.

BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

AR 614

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Rulemaking: New Load Direct Access	)	CALPINE ENERGY SOLUTIONS, LLC'S COMMENTS ON STAFF'S DRAFT PROPOSED RULES

INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") respectfully submits these comments to the Public Utility Commission of Oregon ("Commission") in advance of the public meeting scheduled for May 22, 2018. These comments are in response to the Staff Report circulated to stakeholders on May 17, 2018, which contained a first draft of proposed rules that would apply only to new loads in excess of 10 average megawatts ("aMW"). Calpine Solutions has had limited time to fully evaluate the draft of the proposed rules, which address a relatively complex topic, and therefore we reserve the right to more fully articulate additional comments and to identify additional issues later in this rulemaking process. However, Calpine Solutions appreciates the opportunity to comment on Staff's preliminary draft of the proposed rules for loads over 10 aMW. For purposes of the May 22nd meeting, Calpine Solutions recommends that the Commission issue a notice of proposed rulemaking containing Staff's draft rules, provided that the Commission first delete the 25-percent-fixed-generation charge contained in proposed

OAR 860-038-0720(1)(a) and acknowledge that the other issues discussed below will be further considered during the rulemaking process.

As noted in Calpine Solutions' prior comments, 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 notify the utility of their desire to move to market-based pricing and commercially transact with an Electricity Service Supplier ("ESS"). 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, the enrollment windows and transition charges in the currently offered programs are unnecessarily deterring access to the market in the case of a *new* customer that elects to purchase generation directly from the market and not from the utility from day one.

Aside from a handful of clarifying points addressed herein, the primary point the Commission should change in Staff's draft of the proposed rules is the level of transition charges assessed to a large new load of 10 aMW. In the case of these very large customers, who use at least 10 aMW and for whom the utilities never even *plan* to serve, there should be no transition charges. Calpine Solutions has serious concerns with the lawfulness of the transition charge in the preliminary draft rules circulated by Staff. All of the assertions of alleged risk of stranded costs associated with new loads in this proceeding rely on the assumption that the utility might plan to serve loads under 10 aMW, and thus might even incur generation costs that could be stranded for such new loads. But that reasoning does not apply in the case of the very largest

customers at issue here, which all parties agree are never included in any generation resource plans. Calpine Solutions understood that to be the reason why the Commission would first address the loads of 10 aMW or larger – because those loads present a very simple issue in the absence of any need to debate the appropriate level of transition charges.

Therefore, Calpine Solutions requests that the Commission delete OAR 860-038-720(1)(a), which is the subsection that unnecessarily assigns a 25-percent charge for the utility's fixed generation costs. The Commission should direct Staff to make that correction to the proposed rules prior to issuance of its notice of proposed rulemaking.

COMMENTS

1. Transition Charges (OAR 860-038-0720)

Staff's draft rule includes three sets charges for new 10-aMW loads: (1) a transition charge of 25-percent of utility's fixed generation charges for five years (OAR 860-038-0720(1)(a)); (2) a charge for administrative costs (OAR 860-038-0720(1)(b)), and (3) a significant additional charge for "Existing Load Shortage" (OAR 860-038-0720(2)), which appears to be intended to charge the customer for reduced load at other locations, i.e. to prevent shifting load within the utility's territory to the "new" load. These elements of the draft rule need substantial modification.

a. 25-Percent-Fixed-Generation Charge to All New 10-aMW Loads

In the case of the first charge, which applies in all cases, there is no rational basis for the charge. All parties have agreed that a customer over 10 aMW would not be included in any utility plans to acquire generation resources, and thus no party has yet supplied any basis to assess any stranded generation charge to such a customer. Simply put, no generation resources

were acquired, or even contemplated, for such customer's use, and the customer has not stranded any generation investments. The customer's decision to immediately purchase from the market does not harm remaining customers. It is important to note that the new customer will still pay for use of the transmission and distribution system, plus any upgrades to the same, on the same exact terms and under the same exact tariffs as a similarly situated cost-of-service customer. All that is at issue in the proposed 25-percent-of-fixed-generation charge in OAR 860-038-0720(1)(a) is stranded generation investments.

As a policy matter, there is no basis for assessing a stranded cost charge to the 10-aMW customers. Charging a transition adjustment to a new (or expanding) direct access customer on whose behalf no generation costs have been incurred by the utility amounts to an undue subsidy from the direct access customer to cost-of-service customers. Establishing such a subsidy is unjust and unreasonable. Just as cost-of-service customers are not expected to subsidize direct access customers, the reverse should also be true – direct access customers should not be expected to subsidize cost-of-service customers. Requiring such a subsidy would introduce an asymmetry in the relationship between direct access customers and cost-of-service customers, amounting to a structural bias against the former. Notably, other states have waived stranded cost charges for substantial new loads, given the apparent lack of basis for such charges. *See, e.g., Petition of Google, Inc*, Nevada Public Utilities Commission Docket No 17-04019, 2017 Nev. PUC LEXIS 105 (Sept. 8, 2017).

As drafted, Staff's rules are not consistent with Oregon's direct access law. Under Oregon law, the Commission to may assess "transition charges" to direct access customers *only* if necessary to recover costs of "uneconomic utility investments" incurred for such customers.

ORS 757.607(2); 757.600(31), (35). Staff's prior comments have correctly applied these legal principles here to conclude: "If a utility did not rely on the future new load of a specific large customer when making investments, then a [New Load Direct Access] program would not render these investments uneconomic as defined by current Oregon law." *Staff's Reply Comments*, Docket No. UM 1837, at 5 (Dec. 19, 2017). Accordingly, current law does not allow for assessment of a transition charge to a customer the utility has never served and has never even planned to serve. There are no uneconomic utility investments tied to the new 10-aMW customer. It is also not clear what factual basis exists for a charge assessed at the 25-percent level proposed.

Staff's Report does not explain how this proposed charge is consistent with existing law. The Staff Report characterizes OAR 860-038-0720(1)(a) as a "transition adjustment that returns a portion of the benefit of economic utility investments to cost-of-service customers." *Staff Report* at 3 (May 17, 2018). However, there is no basis in Oregon law to charge the direct access customer for anything other than specific uneconomic utility investments that cannot be recovered as a direct result of the customer's direct access election. Cost-of-service customers have no implicit property right claim on the savings or benefits that a new direct access customer might realize by purchasing power from an ESS. It is unreasonable and contrary to the direct access statutes to attempt to assert such a right, which is implicit in the 25-percent-of-fixed-generation-cost proposal. To the contrary, the relative rights of customers run in the opposite direction: qualifying Oregon customers have a statutory right to direct access service, and the transition charges to which they may be subject are limited to mitigating the impact on cost-of-service customers for the recovery of actual generation-related costs that had previously been

incurred on the direct access customers' behalf. There is no presumption that direct access customers must "share the benefits" from their market transactions.

Calpine Solutions acknowledges that a more difficult question arises with regard to smaller new loads because the utilities assert those smaller new loads are included in certain utility plans for new generation resources. In that case, Calpine Solutions agrees that there could conceivably be some justification for a limited transition charge if the utility makes some irreversible generation investments for such class of new customers before the customer provides any actual notice it will receive cost-of-service rates. As Staff has pointed out earlier, the question in that circumstance is whether the utilities can adjust their load forecasts *prior to acquiring* new generation commitments. *See Staff Comments*, Docket No. UM 1837, at 9 (Oct. 22, 2017). That is a more time-consuming question to answer than the question presented as to new loads of 10 aMW, for which the utilities conduct no planning and acquire no resources. It makes sense to first address the larger customers for whom no planning occurs because that difficult question of how to develop a limited transition charge is not present. Calpine Solutions understood from the Commissioner workshop, on April 23, 2018, that Staff was to address the loads over 10 aMW first for that reason.

Accordingly, the Commission should delete OAR 860-038-0720(1)(a) from the draft rule before issuing the notice of proposed rulemaking, and the issue of an appropriate level of limited transition charge can be addressed, if necessary, when the Commission moves on to rules for smaller loads.

b. Administrative Charge

Staff's proposed rule includes an administrative charge in OAR 860-038-0720(1)(b).

Calpine Solutions has concerns with an open-ended administrative charge. The utilities already have direct access programs, and no party has identified any additional incremental administrative charges that might exist for this new direct access program. Any rule governing administrative charges should require proof that such charges assessed uniquely to these customers are prudently incurred costs in excess of those administrative costs the utility would incur to serve the customer as a cost-of-service customer. Absent such proof, there should be no administrative charges. As currently drafted, the proposed rule does not include any limits and should therefore be revised.

c. Existing Load Shortage Transition Charge

The Commission should also revise the draft proposed rule's significant additional transition charge for the new large customer's "Existing Load Shortage," contained in OAR 860-038-0720(2). This additional charge appears to be intended to charge the 10-aMW customer for reduced load at other locations, i.e. to prevent shifting load from an existing facility to the new facility within the utility's territory to avoid the normally applicable transition charges for existing loads. Calpine Solutions is still evaluating the proposed transition adjustment itself and may have additional comments later on the magnitude and description of this charge.

It is certain at this time, however, that in order to avoid unintended consequences the Commission should clarify the language describing the loads to which this charge applies. For example, the draft proposed rule applies the charge to any "Affiliated Consumer," which is apparently intended to ensure that a single corporate entity engaged in a particular line of business does not simply reduce its load in that business (e.g., paper manufacturing) and open a "new" facility (e.g., a new paper manufacturing facility) that replaces the lost load at the first

facility in order to qualify as a new 10-aMW load. However, the definition of "Affiliated Consumer," in OAR 860-038-0700(2)(a), appears to broadly cover the lost load at any facility over which the new load customer has as little as five percent of the "voting shares" – even if the two facilities in question are not even in the same line of business. This proposal should be limited to customers that open a new facility in the same line of business in the same utility's service territory, and the new load customer must have actual *controlling* interest, not five-percent control, in the first facility if it is going to be responsible for any shifts in load between the two facilities.

Calpine Solutions is still evaluating other aspects of this charge for the "Existing Load Shortage" and may have further comments after the Commission issues it notice of proposed rulemaking.

2. Notice Period (OAR 860-038-0730(1)(d))

As Calpine Solutions understands it, the draft proposed rule requires that a customer provide advance notice of at least one year before taking any electric generation service to enroll in the program, and the customer may even need to provide more than one-year notice if the customer enters into its distribution service agreement over one year before beginning electric service. This proposed notice period is much longer than necessary.

The utilities agree that they are not even planning for customers sized at 10 aMW, and therefore very little notice should be needed to avoid irreversible generation commitments for such customers. When faced with a similar utility planning exercise, the California Public Utilities Commission determined that six months of advance notice was a sufficient time to notify the utility and allow it to avoid incurring generation resources for the customer. *See*

Rulemaking regarding whether, or subject to what Conditions, the suspension of Direct Access may be lifted consistent with Assembly Bill 1X 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). In at least one state, a new large customer was permitted to briefly begin taking electric generation service from the utility prior to moving to direct access without any stranded cost charges – that is, there was no need for any notice because no long-term generation resources were acquired for the customer. *See Petition of Google, Inc*, Nevada Public Utilities Commission Docket No 17-04019, 2017 Nev. PUC LEXIS 105.

Calpine Solutions recommends that the Commission adopt a six-month notice provision that can be reduced on a case-by-case basis for customers of 10 aMW or larger.

3. Reduction to Load After Entry to the Program (OAR 860-038-730(3))

The draft proposed rule contains a harsh penalty for any customer that meets the eligibility criteria of 10 aMW in the first year, but thereafter in years two or three experiences a reduction in its load below the 10-aMW threshold. In that circumstance, the draft rule provides, in OAR 860-038-730(3), that the customer is automatically enrolled in the cost-of-service opt-out program for existing customers in the next enrollment window. Calpine Solutions recommends that the Commission revise this penalty before finalizing the administrative rules.

From an economic standpoint, there is no basis to treat the new customer as an existing customer solely because its initially very large load is reduced to merely being a large load. All parties agree that the utilities did not plan to serve the 10-aMW customer in the first place, and therefore a subsequent reduction in that customer's load after it operates for a certain period of time does not mean the utility has now planned for the customer. The intent of this provision

appears to be to deter gaming the 10-aMW threshold, but other provisions already prevent the type of load shifting from one facility to another that is the most likely method of gaming the threshold. This provision only targets a customer that is somehow able to boost its electricity usage above what it would otherwise be for the first year in order to qualify for the program before reducing its usage in the second or third years. This circumstance seems unlikely. Therefore, Calpine Solutions recommends that the Commission delete this penalty because it lacks economic justification.

If the Commission believes it is necessary to retain some penalty, it is unreasonable to move the customer to the programs for existing customers because the customer would still qualify as a new customer. Instead, the offending customer should be moved to the new load program for loads of less than 10 aMW, which is scheduled to be developed later in this rulemaking before the end of this year.

4. Election Windows

Calpine Solutions does not believe there is any basis for use of a limited election window in the case of the loads sized at 10 aMW, and no basis for any such windows is provided in the Staff Report. Administering such an election window in conjunction with the advance notice requirements would be difficult, if it is possible at all.

However, the draft proposed rule could be read to inadvertently include the election windows for normal direct access programs. The draft rule, in the proposed OAR 860-038-0740(1), states that the new-load customers are subject to OAR 860-038-0275. In turn, the current version of OAR 860-038-0275(1)-(3) sets forth an announcement date for cost-of-service and standard-offer prices for the following year and contemplates an election window for direct

access thereafter. In practice, PacifiCorp adheres to the election window following November 15, which is the announcement date in the existing rule, while Portland General Electric Company ("PGE") holds its annual election window for its long-term opt-out program in September. Calpine Solutions suspects that Staff did not intend to incorporate an election window for this new program. In any case, because there is no apparent basis for a limited election window for this program, this issue should be clarified before the rule becomes final.

5. Additional Emergency Default and Standard Offer Charges

The draft proposed rule includes a new charge to be assessed to new load direct access customers who return to cost-of-service rates. Specifically, the proposed OAR 860-038-0740(3) states that there will be a charge to "mitigate the rate impact" to cost-of-service customers whenever a returning new load direct access customer causes an "increase to existing cost-of-service rates of more than one-tenth of one percent within any one year." This charge would be over and above the normally applicable standard offer and emergency default charges that must be paid by the returning direct access customer. This proposal appears to be directed at PGE's concerns that its standard offer and emergency default services do not capture all possible costs, thus putting cost-of-service customers at risk for cost increases if direct access customers return to cost-of-service rates.

However, the current draft of the proposed rule is ambiguous on how the rate impact would be measured and how the additional charge would be calculated. It is not clear from Staff's Report, or any other comments in this proceeding to date, why the new load direct access customers impose larger costs when they return to cost-of-service rates than existing load direct access customers would cause. Without such an explanation, there is no basis for a special

administrative rule on the point that solely addresses the new load direct access customers. Therefore, Calpine Solutions recommends that PGE's concern should be addressed with a properly filed and supported change to its standard offer and emergency default rates applicable to all direct access customers, where this issue can be resolved more completely than might be possible in an administrative rule.

CONCLUSION

Calpine Solutions supports the Commission's issuance of a notice of proposed rulemaking on new load direct access as attached to Staff's Report, provided that the Commission first delete the 25-percent-fixed-generation charge contained in proposed OAR 860-038-0720(1)(a) and acknowledge that the further issues discussed above will be further considered during the rulemaking process.

DATED: May 23, 2018.

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