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 SUPPLEMENTAL 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 July 17, 2018. In response to the requests from PacifiCorp and Portland General Electric Company ("PGE") submitted on June 18, 2018, the Commission extended the deadline for comments in this rulemaking from July 6, 2018, to August 1, 2018. In addition to submitting several rounds of briefing and comments on this topic in Docket No. UM 1837, Calpine Solutions previously submitted comments in this rulemaking docket on the proposed rule for new large load direct access on May 21, 2018, and June 18, 2018, and Calpine Solutions stands by the position and assertions of those prior submittals. These supplemental comments provide some additional information with regard to the option of using an affidavit in lieu of a punitive "Existing Load Shortage" charge, and to briefly respond to a new argument related to

transmission access that PacifiCorp and PGE introduced for the first time in comments filed on June 18, 2018.

SUPPLEMENTAL COMMENTS

1. Existing Load Shortage Transition Charge

Calpine Solutions continues to believe that the Commission should revise the draft proposed rule's significant additional transition charge for the new large customer's "Existing Load Shortage," contained in proposed rule 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.

At the outset, as we previously commented, any "Existing Load Shortage" charge should be limited, at most, 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 in the existing and new facility. As currently drafted, the proposed rule could have much broader applicability and unreasonably penalize a direct access customer for losses of load at loosely affiliated facilities that are not even in the same line of business. The risk imposed by such an open-ended and vaguely applicable charge will cast a significant cloud of doubt over the business certainty that is needed for long-term direct access elections, and it will significantly impair the viability of the new load direct access program. Additionally, attempting to ascertain when two facilities are affiliated is likely to lead to complicated disputes that the Commission will be called upon to resolve. Moreover, to the extent that the Commission may implement the 25-percent-of-fixed-generation charge proposed in Staff's draft rule at OAR 860-038-0720(1)(a),

it would be duplicative to also implement the additional "Existing Load Shortage" charge against a customer when that customer already paid a transition charge that arguably has no economic basis.

At the Commissioner workshop, parties discussed avoiding these difficult issues through the use of an affidavit by the customer to prevent load shifting. Other states have used this approach under similar circumstances. For example, at a time when direct access service was suspended for new entrants, the California Public Utilities Commission's ("CPUC") adopted the use of an affidavit to allow an existing direct access customer to add new locations or accounts to direct access service provided there would be no net increase in the amount of load that is served under direct access. The CPUC determined that the customer could meet this requirement by attesting in an affidavit, under penalty of perjury, that the customer's aggregate direct access load will not increase by virtue of the relocation or replacement of facilities. *See Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060*, CPUC Decision 04-02-024 (Feb. 11, 2004). Calpine Solutions has attached an example of an affidavit approved for this use as an attachment hereto for reference.

Thus, there is precedent elsewhere for use of a customer affidavit to address these types of issues, which the Commission could build upon to implement a mechanism to prevent load shifting from existing facilities to new large load facilities in Oregon. The customer's affidavit could provide that the customer will not shift load from existing facilities to the new location or facility that participates in the new load direct access program.

2. Response to New Transmission Access Arguments by PacifiCorp and PGE

In comments filed on June 18, 2018, PacifiCorp and PGE have introduced at least one new argument – that new large direct access loads should be exempted from the Commission's rules regarding non-discriminatory transmission access in OAR 860-038-0590.[1] PGE and PacifiCorp include identical arguments on this point, but provide no explanation for why they waited until so late in this rulemaking to introduce this issue. *See PacifiCorp's Comments*, at 5 (June 18, 2018); *PGE's Comments*, at 13-14 (June 18, 2018). In any event, this new argument should not preclude adoption of the proposed rule for new large load direct access because the Commission's existing administrative rules regarding distribution and transmission access already properly address the issue.

The administrative rules in OAR 860-038-0590 merely provide for non-discriminatory transmission access for direct access customers and their electricity service suppliers ("ESS"). For the Commission's reference, Calpine Solutions has attached the existing rule in full to these supplemental comments. The rule requires PacifiCorp and PGE to "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." OAR 860-038-0590(3). It prohibits the utilities from giving "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

[1] The remainder of the arguments in PGE and PacifiCorp's June 18th comments have been previously addressed by Calpine Solutions and other parties, and therefore we will not repeat those responses again here.

direct access consumers." *Id.* The rule also requires "[a]ny 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." OAR 860-038-0590(3)(a).

The existing rule was adopted in 2001. *See In Re Proposed Rulemaking to Implement the Code of Conduct, Aggregation, and Allocation of Funds to Education Service District Provisions of SB 1149*, Docket No. AR 390, Order No. 01-233 (March 13, 2001). The Commission's existing rules are consistent with the Federal Energy Regulatory Commission's ("FERC") open-access policies that are designed to promote open use of the transmission system to access competing suppliers in the wholesale and retail markets. *See id.* Indeed, a state rule would violate FERC's open-access requirements if it were to disadvantage direct access customers or their suppliers as compared to PacifiCorp's use of its transmission system for bundled cost-of-service customers.

PGE and PacifiCorp assert that "new load would not have been included in the utilities' load and resource reservations required under FERC open access[,]" and therefore the new load direct access customers cannot be covered by pro-rata sharing requirement of OAR 860-038-0590(3)(a). However, there is no indication in the existing administrative rule itself or the 2001 order adopting it that the rule is inadequate to address the circumstance of new customers moving immediately to direct access. On its face, the rule contains no special treatment for the new large load moving immediately to direct access as compared to a new large load that will buy generation services from the incumbent utility. The utilities' argument also overlooks that new customers can already elect to take direct access without previously taking cost-of-service

generation services from PacifiCorp; this rulemaking docket merely envisions relieving the largest of such customers from the otherwise applicable transition charges for utility's stranded generation assets. Thus, if the alleged problem exists under OAR 860-038-0590(3)(a) with regard to new customer direct access loads, it has existed for years under the current rules.

If the utilities believe that some modification of their FERC-approved OATT is necessary to adequately plan for new large loads that seek to buy cost-of-service or direct-access-service generation services, the existing rule expressly contemplates such a filing. The rule provides:

> 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.

OAR 860-038-0590(4). Nothing precludes the utilities from making such a filing with FERC to ensure that new large loads opting to take direct access service from an ESS will be treated comparably to new large loads opting to purchase generation services from the utility.

In short, PacifiCorp and PGE's last-minute argument fails to demonstrate that the Commission's existing rules on distribution and transmission access are an impediment to prompt implementation of the new direct access program.

CONCLUSION

Calpine Solutions supports the Commission's adoption of the proposed rule with the revisions contained in our comments filed on May 21, 2018 and June 18, 2018, as supplemented by the comments herein.

DATED: July 13, 2018.

RICHARDSON ADAMS, PLLC

/s/ *Gregory M. Adams*

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Attachment 1

Sample Customer Affidavit

Direct Access Customer Load Declaration for Customers with at Least One Direct Access Account that Exceeds 500 kW in Demand

1. Customer Declaration

I, _____, state as follows:

1. I am an authorized representative of _____ ("Customer") and I am authorized to make this declaration.

2. I have personal knowledge of the matters set forth herein and if called upon as a witness could and would testify competently thereto.

3a. On or before September 20, 2001, Customer entered into an agreement for direct access (DA) service (Agreement) with the following Electric Service Provider (ESP), _____ for (check as many as apply):

- O _____ kW/kWh of load
- O Customer's full load requirements

3b. Customer currently has a valid agreement for DA service in effect with (check one):

- O The same ESP
- O The following ESP: _____

4. Customer warrants that its total level of DA load on all DA accounts does not exceed the contracted level of load defined by the Agreement that was in effect as of September 20, 2001, and entered into consistent with the California Public Utilities Commission's ("Commission") DA suspension decisions.

5. Customer understands that the Commission may conduct spot audits or informal investigative inquiry, as it deems necessary, to deal with any potential disputes concerning the accuracy of Customer's claims concerning contractual volumes. Customer understands that the Utility may be required to provide information to the Commission regarding Customer's electricity service and consumption on all Customer's DA accounts, including but not limited to, the applicable meter, account numbers, and the associated DA load. Customer agrees to retain and make available, to the Commission, the relevant provisions of Customer's Agreement with ESP concerning contractual volumes, which was in effect as of September 20, 2001, as well as any subsequent DA agreements, to the extent not previously inadvertently lost or destroyed and currently not retrievable.

6. Customer acknowledges and agrees that it must take such actions as necessary to comply with existing DA-related decisions and requirements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this __ day of _____, ____ at _____, _____ *[city, state].*

_____ *[signature]*

_____ *[title]*

All customers with at least one DA account that exceeds 500 kW in demand shall execute this Direct Access Customer Load Declaration. This document may be submitted by fax, provided the originals are delivered to the Utility within 10 calendar days thereafter.

Attachment 2

Existing Version of OAR 860-038-0590

OAR 860-038-0590

This document is current through changes published in the November 1, 2017 Oregon Bulletin

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) 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 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.

Statutory Authority

Statutory Authority:

ORS 183, ORS 756 & ORS 757

Statutes Implemented: ORS 756.040 & ORS 757.600 - ORS 757.667

History

History: PUC 7-2001, f. & cert. ef. 3-15-01