

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

AR 614

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

INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) respectfully submits these final comments to the Public Utility Commission of Oregon (“Commission”). In addition to submitting several rounds of briefing and comments on development of a new large load direct access program in Docket No. UM 1837, Calpine Solutions previously submitted written comments in this rulemaking docket on the proposed rule for new load direct access (“NLDA”) on May 21, 2018, June 18, 2018, and July 13, 2018, which address the numerous issues raised in these proceedings. Calpine Solutions stands by the detailed positions and assertions of those prior submittals without repeating them herein.

First, these final comments respond to a new argument related to transmission access that PacifiCorp and Portland General Electric Company (“PGE”) clarified with joint comments filed on July 26, 2018. Second, these comments express Calpine Solutions’ overall support for the major provisions of the latest version of the draft rules circulated by the Administrative Hearing

Division on July 17, 2018, and provide some minor proposed edits to certain language used in that draft rule.

Calpine Solutions appreciates the effort of the Commission, Staff, and the Administrative Hearings Division to develop the rules for NLDA program. The draft rules circulated on July 17, 2018, strike an appropriate compromise of the various issues raised by the stakeholders of divergent interests. Calpine Solutions supports adoption of the major provisions of that latest version of the draft rules.

COMMENTS

1. Response to New Transmission Access Clarification by PacifiCorp and PGE

In comments filed on June 18, 2018, PacifiCorp and PGE have introduced a 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. Calpine Solutions submitted comments on July 13, 2018, expressing concern with the breadth of the utilities’ arguments, which would have repealed the applicability of the entirety of the Commission’s rules regarding non-discriminatory transmission access with respect to new large loads over 10 aMW. The utilities further clarified their position in comments submitted on July 26, 2018, and the utilities now state that their sole concern is that new large loads not have the same pro-rata access to the utilities’ existing transmission capacity reservations made for existing cost-of-service loads and existing customers moving from cost-of-service to direct access service. The utilities ask that the NLDA program rules state that the pro-rata sharing provision, OAR 860-038-0590(3)(a), does not apply to NLDA customers.

Calpine Solutions appreciates the clarification by the utilities and their willingness to work through this issue to adopt a change that is narrowly targeted to the problem with which the utilities are concerned. However, as we noted in our prior comments, this issue (new customers having a direct access option) is an issue that has existed ever since the direct access program was implemented, and Calpine Solutions believes that resolution of this issue should not delay adoption of the NLDA program rules. Calpine Solutions believes the issue could be resolved with a revision to the overall direct access program rules to ensure comparable treatment of new loads, large and small, consistent with transmission planning practices, and we would look forward to working with the utilities and other parties to complete such revisions to the rules.

However, adoption of the utilities' proposed solution in this rulemaking would be an incomplete solution to the alleged problem with the multi-faceted transmission planning issues. Specifically, the utilities' proposal does not provide any assurance of comparable treatment between new large cost-of-service loads and new large load direct access customers. The problem is that the utilities' proposed rule does not state the utilities may not use their prior transmission reservations for the purpose of serving their own new large loads over 10 aMW. Such a prohibition is within the spirit, if not the express requirements, of the existing version of OAR 860-038-0590, but the utilities proposed revision would eliminate that protection just for new large loads over 10 aMW that elect direct access. If the Commission adopts the utilities' proposal here, the utilities could have a competitive advantage to serving a new large 10 aMW customer with cost-of-service generation (or some future VRET product). For example, such competitive advantage would exist if existing unreserved transmission capacity is not available through the electricity service supplier's ("ESS") transmission service request for the prospective

NLDA customer, but the utility is able to use transmission capacity previously reserved for cost-of-service load growth for that new 10 aMW customer to offer a better deal to the customer than the ESS.

In short, the Commission should ensure that new large loads electing to participate in direct access have the same comparable access to the utilities' transmission system and transmission reservations as would be made available to a similarly situated new large load that elected to purchase generation from the utility under cost-of-service generation. Calpine Solutions believes that the issue the utilities have raised should be addressed in the next phase of this rulemaking and should also address the issue more generically as to all new loads to ensure all new loads are provided comparable transmission access.

2. Calpine Solutions Supports the Major Provisions of the Latest Version of the Draft Rules

Although the draft rules circulated on July 17, 2018 do not adopt all of the policy recommendations Calpine Solutions has made in this rulemaking, Calpine Solutions believes that the overall rule strikes an appropriate compromise of the various issues raised by the stakeholders of divergent interests. Calpine Solutions supports adoption of the major provisions of that latest version of the draft rules. We have attached a redline to that draft to propose certain changes to clarify the language used in several locations, and discuss the significant outstanding issues below.

a. 860-038-0730 – Coal-by-Wires limitation

Calpine Solutions does not oppose applying the coal-by-wires limitation in ORS 757.518(1)(b) to the ESS generation supply provided under the NLDA program. However, the existing draft rule should be clarified to ensure that the same requirement and exceptions apply

equally to the ESS supplying NLDA load.

The coal-by-wires prohibition was enacted by Section 1 of Senate Bill 1547 in 2016. The statutory bar on use of coal-fired resources applies only to electric companies, which are the Oregon investor-owned utilities, and it does not apply to ESSs. *See* ORS 757.518(2). It generally requires that: “On or before January 1, 2030, an electric company shall eliminate coal-fired resources from its allocation of electricity.” ORS 757.518(2). It further provides that “‘Allocation of electricity’ means, for the purpose of setting electricity rates, the costs and benefits associated with resources used to provide electricity to an electric company’s retail electricity consumers that are located in the state.” ORS 757.518(1)(a) & (2). Thus, the prohibition against use of coal is a requirement “for purposes of setting electricity rates.”

Importantly, the legislation contains a limited exemption for short-term market purchase of undifferentiated power. It provides: “‘Coal-fired resource’ does not include a facility generating electricity that is included as part of a limited duration wholesale power purchase made by an electric company for immediate delivery to retail electricity consumers that are located in this state for which the source of the power is not known.” ORS 757.518(1)(b)(B).

Calpine Solutions does not object to a prohibition on use of coal-fired energy in the NLDA program so long as the prohibition also recognizes the exception available to the investor-owned utilities for short-term market purchases in ORS 757.518(1)(b)(B). That exception exists for practical reasons. For example, without that exception, it would be difficult, or impossible, to supply imbalance energy to balance the supply of energy to the direct access customer. We have provided a proposed edit to the draft rule to ensure this exception is preserved for the NLDA program.

b. OAR 860-038-0700(2)(a) – Load shifting within the “same line of business”

Calpine Solutions supports the limitation on the Existing Load Shortage Charge to load shifting from an existing load to a location operating in the “same line of business” as the existing customer and owned by a closely affiliated company. There were questions raised at the last public meeting as to whether the term “same line of business” is specific enough to achieve the objective of the rule. Calpine Solutions does not expect it will be difficult to implement the rule as written, but we do not oppose a reasonable further clarification of the rule.

c. OAR 860-038-0740 – Return to Cost-of-Service Charge

Calpine Solutions generally supports the recent revisions to the Return-to-Cost-of-Service charge, but believes there should be some book ends on when the charge can be triggered. The current draft rule allows the utility to propose the charge whenever there is a “significant increase to existing cost of service rates.” 860-038-0740(3)(b). This proposal assumes there could be significant costs to the utility above the currently existing charges for returning direct access customers in the event that a significant amount of direct access load returns to cost-of-service generation in a short time period. However, as was noted at the last public meeting, an unknown future charge could easily deter participation in the NLDA program.

If this rule will be adopted, there should be further description of a “significant increase” to reduce the risk of the use of this charge to participants in the program. Calpine Solutions recommends that “significant increase” be changed to an increase of at least five percent in excess of forecasts for bundled service. Alternatively, this issue could be

addressed more generically with respect to all direct access programs in a future rulemaking or proceeding along with reliability issues PGE has raised in this and other recent proceedings.

d. OAR 860-038-0750 – Program Cap

Calpine Solutions supports the newly proposed cap to the extent that it attempts to approximate roughly 50 percent of the cap for the existing long-term direct access programs and also supports merging the NLDA cap with the existing long-term direct access programs. However, disputes are likely to arise if the cap is set at a percentage of each utilities' load as currently proposed, due to the lack of transparency as to the utilities' load and the different measurements that can be made of load (e.g., load with direct access or without direct access, etc.). Setting the cap at a percentage of a known amount, such as the cap for the existing long-term direct access programs, is more certain.

Therefore, Calpine Solutions recommends that the rule set the NLDA cap at 50 percent of the currently applicable cap for each utility's long-term direct access program for existing customers, which we understand was the general intent behind adoption of the current proposal for a cap set at six percent of each utility's 2017 load. In the case of PGE, the NLDA cap would be 150 aMW (subject to any changes in the current general rate case). In the case of PacifiCorp, the NLDA cap would be 87.5 aMW. Alternatively, the rule could state a separate program cap level in aMW for each utility to remove the ambiguities identified above.

CONCLUSION

Calpine Solutions supports the Commission's adoption of the proposed rule with the revisions contained in attached redline to the draft rule.

DATED: August 1, 2018.

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Of Attorneys for Calpine Energy Solutions, LLC

Attachment 1

Calpine Solutions' Proposed Edits to Version of
Proposed Rule Circulated July 17, 2018

Formatted: Heading 2, Add space between paragraphs of the same style

860-038-0700

Definitions for New Large Load Direct Access Program

(1) Unless otherwise defined in section (2), the definitions set forth in OAR 860-038-0005 are applicable to New Large Load Direct Access Programs.

(2) As used in the New Large Load Direct Access Program rules:

(a) "Affiliated Consumer" means a consumer, 50 percent or more of the voting shares of which are held by another consumer, engaged in the same line of business as the 50 percent or greater shareholder.

Commented [GA1]: Commissioners asked if this language is too vague as to the "same line of business".

Calpine Solutions does not expect it will be difficult to implement the rule as written, but we do not oppose a reasonable further clarification of the rule.

(b) "Average Historic Cost-of-Service Load" means the average monthly Cost-of-Service Eligible Load during the 60 month period beginning five years prior to the date a consumer gives binding notice of participation in the New Large Load Direct Access Program.

(c) "Cost-of-Service Eligible Load" means the load of a consumer that is eligible for a cost-of-service rate.

(d) "Existing Consumer" means a consumer that is or has been a cost-of-service consumer of an electric company within the prior five calendar years.

(f) "Existing Site" means a site that receives or has received energy in the last five years that is eligible for a cost-of-service rate.

Commented [GA2]: Rule is missing a section (e) here.

(g) "Existing Load Shortage" means the larger of zero or a consumer's Average Historic Cost-of-Service Load plus Incremental Demand Side Management less the average Cost-of-Service Eligible Load during the previous 60 months.

(h) "Existing Load Shortage Transition Adjustment" means a charge or credit equal to:

(A) 75 percent of fixed generation costs plus net variable power cost transition adjustments during the first five years after enrollment in the New Large Load Direct Access Program; and

(B) 100 percent of fixed generation costs plus net variable power cost transition adjustments after the first five years of enrollment in the New Large Load Direct Access program.

(i) "Incremental Demand Side Management" means the effective net impact of energy efficiency measures and demand response implemented at a facility after a consumer gives binding notice of participation in the New Large Load Direct Access Program.

(j) "Load Shifting" means the relocation of facilities, equipment, processes, manufacturing, employees or any economic activity for the deliberate purpose of increasing load at locations participating in the New Load Direct Access Program from locations not subject to the New Load Direct Access Program.

(k) "New Large Load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility, which:

(A) Has never been contracted for or committed to in writing by a cost-of-service consumer with an electric company; and

(B) Is expected to result in a 10 average megawatt or more increase in the consumer's power requirements during the second and third years after new operations begin.

(l) "New Large Load Direct Access Program" means a direct access program offering by an electric utility that meets the requirements set forth in the New Large Load Direct Access Program section of the Division 38 rules.

(m) "New Large Load Direct Access Service Transition Rate" means a rate that is applied to load served under the New Large Load Direct Access Program.

860-038-0710

Requirement to Enable a New Load Direct Access Program

An electric company that enables direct access service must enable a New Load Direct Access Program for New Large Load consumers, subject to the requirements set forth in this New Large Load Direct Access Program section of the Division 38 rules.

860-038-0720

Transition Rates

(1) In addition to all other non-generation charges applicable to direct access customers under OAR 860-38-0260 to a New Large Load Direct Access Program consumer, an electric company must charge New Large Load Direct Access consumers a New Large Load Direct Access Service Transition Rate that recovers the following:

- (a) 20 percent of the fixed generation costs for five years; and
- (b) All reasonable costs of administering the New Large Load Direct Access Program.

(2) Consumers receiving service under the New Large Load Direct Access program must also pay an Existing Load Shortage Transition Adjustment on the sum of the Existing Load Shortage for the consumer and the Existing Load Shortage of all of the consumer's Affiliated Consumers. A consumer may be exempted from charges made under this section if the consumer can demonstrate that the change in load in question is not due to load shifting activity. The electric company tariff must include provisions detailing procedures and requirements for the demonstration.

Commented [GA3]: This is a little unclear as currently drafted. We have proposed a clarifying edit.

Commented [GA4]: Note that this phrase is used throughout but is not defined. Rules would be clearer if this phrase "New Large Load Direct Access Program Customer" were defined as a participant in the program

860-038-0730

New Large Load Eligibility Requirements

(1) Only New Large Loads that meet the following requirements are eligible to participate in the New Large Load Direct Access Program:

(a) The New Large Load must be separately metered unless the consumer can demonstrate an alternative means of measuring the New Large Load with comparable accuracy.

(b) New Large Load Direct Access Program is only available for consumers contracting for energy resources that do not include any allocation of coal-fired resources as defined in ORS 757.518 (1)(~~b~~)(~~B~~) after January 1, 2030.

(c) New Large Load Direct Access consumers that are found in violation of the provisions of this section must be enrolled in the general cost-of-service opt out program in the following direct access enrollment window.

(A) A New Large Load Direct Access consumer must provide to the Commission upon request contracts or other materials necessary to investigate compliance with this section.

(B) An Electricity Service Supplier that contracts for or supplies resources in the New Large Load Direct Access Program must provide an annual report to the Commission confirming the source of resource supplies for customers participating in the New Load Direct Access Program.

(d) Each New Large Load consumer must notify the electric company of its intent to enroll in the New Large Load Direct Access Program and opt out of cost-of-service rates at the earlier of either:

(A) A binding written agreement with the utility to receive distribution service for eligible new load, or

Commented [GA5]: ORS 757.518(1)(b) is the definition of coal-fired power. It includes the generic definition in subpart (A) and then includes an exemption for certain short-term market purchases of undifferentiated power in subpart (B). As drafted here, the rule could be misread to state that the ESS may not use the same exemption for undifferentiated short-term market purchases available to IOUs under the coal-by-wires limitation from SB 1547. So subpart (B) should be deleted.

Commented [GA6]: Corrected terminology from OAR 860-038-0001.

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(B) One year prior to the expected starting date of the incremental load.

Subsection (1)(d) is waived for the eligible New Large Load consumer that has entered into a written agreement with an electric company prior to September 30, 2018, indicating its intent to receive distribution service from an electric company and for which the electric company has not planned to provide generation supply service.

(2) ~~If~~ For at least one period of 12 consecutive months within the first 36 months of receiving service, the actual load of a facility served under the New Large Load Direct Access Program ~~does not~~ must meet or exceed 10 average megawatts ~~in any if summed and averaged over the 12-month period~~ 12-month period during the first 36 months of receiving service, and ~~the~~ unless any shortfall in load below that threshold is not attributable to equipment failure, energy efficiency, load curtailment or load control, or other causes outside the control of the New Large Load Direct Access Program consumer. ~~If the customer fails to meet this threshold,~~ the consumer must be enrolled in a direct access program of the consumer's choice ~~upon disqualification from the New Large Load Direct Access Program.~~

(a) The electric company must petition the Commission to de-enroll the consumer under this provision, and

(b) The consumer will be provided an opportunity to demonstrate to the Commission that its reduction in load to less than 10 average megawatts was the result of equipment failure, energy efficiency, load curtailment or load control, or other causes outside the control of the New Large Load Direct Access Program consumer.

Commented [GA7]: The intent here is somewhat unclear as written – it could be read to mean the customer disqualified if it falls below 10 aMW in any single year of the first 3 years, but we understand from the last staff workshop on 7-19-18 that the intent is that the customer is qualified if it exceeds 10 aMW in any 12 consecutive months of the first 3 years. We recommend clarifying language to avoid disputes.

860-038-0740

Nonresidential Standard Offer, Default Supply and Return to Cost of Service

(1) New Large Load Direct Access Program consumers are subject to the requirements set forth in OAR 860-038-0250 and OAR 860-038-0280, except as set forth in section (3) of this rule.

(2) A New Large Load Direct Access Program consumer may return to cost-of-service rates under the same rates and terms of service as the electric company's current cost-of-service opt- out offers for direct service consumers, except as set forth in section (3).

(3) To mitigate the rate impact to existing cost-of service consumers, an electric company must request Commission approval of a forward-looking rate adder applicable to New Large Load Direct Access Program consumers returning to cost-of-service rates or rates under OAR 860-038-0250 and 860-038-0280 when the electric company forecasts that:

(a) The return to rates under OAR 860-038-0250 and 860-038-0280 for an individual or group of New Large Load Direct Access Program consumers will result in a significant increase to existing cost-of-service rate; or

(b) The return to a cost-of-service rate for an individual or group of New Large Load Direct Access Program consumers will result in ~~an~~ significant increase to existing cost of service rates ~~of at least five percent in excess of forecasts for bundled service.~~

(4) The Commission will consider the rate adder under Section (3) of this rule as part of a tariff filing.

(5) The electric company must file annual updates that justify any rate adder developed according to this rule or any updates to the approved rate adder.

Commented [GA8]: Commissioners asked for comment on the uncertainty that the open-ended return charge might place on the program.

Calpine Solutions is concerned with this issue and believes there should be book ends on it by defining what is a "significant increase."

860-038-0750

New Large Load Direct Access Program Caps

(1) Each electric company must ~~make~~ allow participation in the New Large Load Direct Access Program of at least ~~6-50~~ percent of the participation limit in the electric company's long-term direct access program for existing customers ~~weather~~

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~~normalized annual load in calendar year 2017 available to New Large Load and Affiliated New Large Single Load.~~

(2) Section (1) of this rule sunsets following the fifth calendar year that the New Large Load Direct Access Program has been in place.

(3) Each electric company must file a status report to the Commission within two months of total enrollment in New Large Load Direct Access Programs reaching 25 MWa, 50 MWa, 100 MWa and 80 percent of the enrollment limit.

Commented [GA9]: Proposed edits to clarify the language here and remove an undefined term – “Affiliated New Large Single Load”.

To provide further clarity, Calpine Solutions recommends that the rule be set at 50 percent of the cap in the existing long-term direct access programs.

Commented [GA10]: We understand from the 7-19-18 workshop that the intent is for the program cap to no longer be applicable after five years unless a utility shows that the cap is still appropriate at some level. Calpine Solutions agrees with that intent and also agrees a little more clarity on the point would be helpful in this section of the rule.