

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

UE 335

| | | |
|--------------------------------------|---|---------------------------------|
| In the Matter of |) | CALPINE ENERGY SOLUTIONS, |
| |) | LLC's RESPONSE TO ALLIANCE OF |
| PORTLAND GENERAL ELECTRIC |) | WESTERN ENERGY CONSUMERS' |
| COMPANY, |) | APPLICATION FOR RECONSIDERATION |
| |) | AND REHEARING |
| Request for a General Rate Revision. |) | |
| <hr/> | |) |

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its Response to the Application for Reconsideration and Rehearing ("Application") filed by the Alliance of Western Energy Consumers ("AWEC"). AWEC seeks reconsideration of the Oregon Public Utility Commission's ("Commission") order approving the multiparty Partial Stipulation Regarding Direct Access Issues ("Stipulation") related to Portland General Electric's ("PGE") long term direct access program ("Direct Access Stipulation") entered into by PGE, Staff, the Kroger Company, Calpine Solutions, and Albertsons Companies, Inc. For the reasons set forth below, the Commission should deny AWEC's Application.

RESPONSE

1. The Stipulation Is Merely a Temporary Preservation of the Status Quo of Longstanding Commission Policy

The Stipulation merely maintains the status quo relative to the participation cap and the level of transition charges for PGE's long-term direct access program. It sets no new policy or policy guidance. Hence, the Commission's approval of the Stipulation does nothing more than incorporate, by implication, the reasoning and findings supporting the original orders establishing the cap and the transition charges. As conceded by AWEC in its Application, the

“hard cap on participation in the long-term opt out program of 300 aMW has . . . been in place since its inception [2003].” *AWEC’s Application for Reconsideration* at 3.

Before the Stipulation was filed, several parties had proposed significant changes to PGE’s direct access programs in this proceeding. The disputed issues included: a proposal to convert the five-year program to a 10-year program with 10 years of escalating fixed generation costs and transition adjustments under the currently approved ongoing valuation methodology developed for a five-year period, *see* PGE/1300, Macfarlane-Goodspeed/40-41; a proposal to add language to PGE’s Rule K to allow PGE to petition the Commission to decertify an ESS that fails to schedule energy within PGE’s proposed scheduling requirements, *id.* at 41-43; proposals to reduce the transition charges to reflect the savings to non-participating customers associated with avoided capacity acquisitions occasioned by loss of direct access loads, *see, e.g.*, Calpine Solutions/100, Higgins/4, 17-19; proposals to remove the overall participation limit in PGE’s three-year and five-year programs of 300 average megawatt (“aMW”), *see, e.g., id.* at 22; a proposal to include a credit in the transition adjustment calculation for the value of freed-up renewable energy certificates (“RECs”), *id.* at 25-29; and proposals to make at least eight different changes to the criteria for a customer’s eligibility to participate in the three-year and five-year programs, *see id.* at 23-24; Albertsons-Safeway/100, Waidelich/2-9.

After extensive settlement discussions, five parties entered into the Stipulation that comprehensively resolved these complicated and contentious issues. Stipulating Parties/501. The Stipulating Parties include a diverse group of stakeholders representing divergent interests on these contentious issues. The Stipulation largely preserves the major components of PGE’s direct access programs as they currently exist. Most notably, the Stipulation preserves the

duration and calculation of the transition charges and the enrollment cap in PGE's long-term opt-out program.

Additionally, the Stipulation is of limited duration, and the Stipulating Parties may propose changes that would become effective for service years after 2021, which would apply to customers opting out in the election window in late 2021. *See* Stipulating Parties/501 at 2-3, at ¶ 6. Those issues could be addressed as early as a general rate case filed in the beginning of next year, 2020. While the Stipulation is in effect, the Stipulating Parties intend to continue working towards resolving the contentious issues that are resolved on a temporary basis in the Stipulation.

AWEC's challenge to the Stipulation appears to overlook competing concerns of other parties that the Commission may have had to address at this time had it rejected the Stipulation. In addition to AWEC's challenge to the Stipulation's preservation of the enrollment cap, the Citizens Utility Board ("CUB") objected to the Stipulation and argued the Commission should convert the five-year program to a 10-year program.

Given the competing positions in the case, if the Commission had taken up AWEC's concerns with the Stipulation's preservation of the enrollment cap, it would have also likely had to address the CUB's complaints about the duration of transition charges. In turn, if the Commission had taken up CUB's arguments about the duration of the transition charges, the Commission would have had to also address arguments by many other parties, including Calpine Solutions, that if the transition period extended beyond five years, it would have to include a capacity credit to direct access customers. *see, e.g.,* Calpine Solutions/100, Higgins/4, 17-19.

In short, if any element of the Stipulation had been rejected, such as the enrollment cap, parties may have argued the Commission must reexamine other elements of these complicated

and contentious issues. As noted above, all parties retain the right to continue to work towards resolving the issues in future years because the Stipulation is of limited duration. In Calpine Solutions' view, the Stipulation was a reasonable compromise of the divergent issues that simply preserves the status quo on a temporary basis, and is therefore in the public interest.

2. AWEC'S Petition Overlooks the Standard for Approval of a Contested Stipulation and the Commission's Policy in Favor of Settlement

The Commission's order appropriately recognized and applied the standards applicable to a contested stipulation. The Commission committed no legal error in application of its existing legal standards for contested stipulations.

The Commission may approve non-unanimous stipulations where substantial competent evidence on the record shows the stipulation will result in just and reasonable rates. *See PacifiCorp Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022, at 6 (Jan. 26, 2010). The Commission "may evaluate the validity of the rates based on 'the reasonableness of the overall rates, not the theories or methodologies used or individual decisions made.'" *Id.* (quoting *In re Portland Gen. Elec. Co.*, Docket. No. DR 10, *et al.*, Order No. 08-487 at 7-8 (Sept. 30, 2008)). The Commission has therefore approved a stipulated overall rate of return, despite the fact that a party opposed the stipulation and the stipulating parties did not even "agree among themselves on the individual capital components that make up that return." *Id.* at 7-8. The Commission has stated that its primary role is not to "examine any . . . specific cost categories in detail, but rather to determine whether the Stipulation as a whole results in just and reasonable rates." *Id.* at 10.

In this case, there was competing evidence from parties of divergent interests with respect to the level of the enrollment cap in the long-term direct access programs and the amount of

transition charges that should be assessed. The Stipulation presents a reasonable compromise to simply preserve the status quo as it existed before this case. In other words, aside from a handful of relative minor changes, the outcome is largely the same as if PGE had not proposed to change the transition charges applicable to the program in its initial filing and had never raised the issue of the major components of the direct access programs.

The Commission's order appropriately recognizes the value of this compromise. The Order first explains that there is clearly sufficient evidence in the record to support the Stipulation, stating: "PGE and the stipulating parties provided support for the stipulation in the form of joint testimony, which discusses the reasonableness of the ultimate compromise between parties." Order No. 18-464 at 18. The order then proceeds to explain more generally why approval of the stipulation is in the public interest, explaining that rejection of this Stipulation "might discourage parties from pursuing stipulations in the future." *Id.* The Commission was concerned it "could unintentionally make settlement of complicated or difficult issues less likely in the future, because utilities or other parties might be concerned that the existence of a stipulation resolving such a contentious issue might be used against them." *Id.* Given these concerns and the limited duration of the Stipulation that simply preserves the status quo, the Commission did not commit legal error in approving the Stipulation.

CONCLUSION

For the foregoing reasons, Calpine Solutions respectfully requests that the Commission deny AWEC's Application for Reconsideration or Rehearing.

Dated this 27th day of February, 2019.

Respectfully submitted,

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)
515 N. 27th Street
Boise, Idaho 83702
Tel. 208 938-2236
Fax: 208 938-7904
greg@richardsonadams.com

Of Attorneys for Calpine Energy Solutions, LLC