BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Request for a General Rate Revision	)))))	UE 335 CALPINE ENERGY SOLUTIONS, LLC's OPENING BRIEF ON DIRECT ACCESS ISSUES

INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its Opening Brief on Direct Access Issues to the Public Utility Commission of Oregon ("Commission"). As explained in more detail below, Calpine Solutions requests that the Commission approve the Partial Stipulation Regarding Direct Access Issues ("Stipulation") filed on August 20, 2018, by Portland General Electric Company ("PGE"), Staff of the Public Utility Commission of Oregon, Fred Meyer Stores and Quality Food Centers, Divisions of The Kroger Co., Albertsons Companies, Inc., and Calpine Solutions (collectively, the "Stipulating Parties").

If approved by the Commission, the Stipulation will comprehensively resolve all issues raised in this proceeding related to PGE's direct access programs. Prior to the execution of the Stipulation, parties raised several complex and contentious issues proposing to make significant changes to PGE's longstanding and well-established direct access programs. The Stipulation makes some relatively minor changes to the programs but largely preserves the status quo for three years so that all stakeholders may continue to work through the complex issues related to the direct access programs. The Citizens Utility Board ("CUB") and the Alliance for Western Energy Consumers ("AWEC") have each objected to isolated provisions of the Stipulation, but

their objections do not warrant rejection of the Stipulation. Instead, the Commission should approve the Stipulation in its entirety as a reasonable resolution of the disputed issues that will result in direct access rates and tariffs that are just and reasonable and in the public interest.

BACKGROUND

Under a retail direct access program, the direct access customer continues to use the utility's distribution system but obtains energy from another supplier. *See* Calpine Solutions/100, Higgins/7. Direct access provides customers the option to control their generation supply, which in addition to potential cost savings is attractive to many customers with a corporate preference for participating in the market or for purchasing more renewable energy than included in PGE's cost-of-service portfolio. *Id.* at 11. In this proceeding, the Commission must ensure that PGE's direct access offerings provide meaningful opportunities for continued development of the competitive retail market in Oregon.

1. Oregon Direct Access Law and Administrative Rules

In 1999, Oregon's Legislative Assembly enacted Oregon's landmark electric restructuring legislation, Senate Bill 1149. Or Laws 1999, ch 865, *compiled, as subsequently amended, at* ORS 757.600 to 757.691. The Legislative Assembly declared 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. Accordingly, the law requires the Commission to provide all nonresidential retail customers direct access to competitive markets by allowing them to purchase generation services from a Commission-certified electricity service supplier ("ESS"). ORS 757.600(6), (16), 757.601(1), 757.649(1)(a). Importantly, the legislature went beyond merely requiring that direct access be allowed by also specifically requiring 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).

The law further addresses stranded costs and stranded benefits caused by a customer's direct access election. *See* ORS 757.607(2). It characterized stranded costs as "uneconomic utility investments," which are defined, in pertinent part, as certain investments "that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges." ORS 757.600(35) (emphasis added). If, for example, direct access results in a significant loss of customer load, then a portion of a utility's investment in generation may become uneconomic because it is unable to recover those costs from its remaining customers or from sales into the competitive wholesale market.

The law also contemplated stranded benefits, which were characterized as "economic utility investments." ORS 757.600(10). If, for example, the output of the utility's existing generation fleet could be sold in the competitive wholesale market at a price greater than the utility's costs, a significant loss of customer load could result in profits that would flow to the utility's shareholders or its remaining customers. Thus, economic utility investments could benefit the customers that do not elect direct access if a credit is not provided to direct access customers in the amount of the benefit.

If necessary to prevent unwarranted cost shifts, the law allows the Commission to apply "transition charges" or provide "transition credits" to a customer who departs from the incumbent electric company's traditional generation offering to account for the electric company's transition costs or benefits resulting from investments in uneconomic or economic

utility investments. *See* ORS 757.607(1)-(2) *see also* ORS 757.600(31) (defining "Transition charge" as a charge for "uneconomic utility investments"); ORS 757.600(32)(defining "Transition credit" as a credit for "economic utility investments").

The statute requires the Commission to adopt and follow its own administrative rules in setting the transition charges for the unrecoverable portion of the incumbent electric company's uneconomic investments. *See* ORS 757.659(4). The rules require PGE to use the "ongoing valuation" method, *see* OAR 860-038-0140(1), which determines the "transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period." OAR 860-038-0005(41). The logical premise behind ongoing valuation is to credit or charge direct access customers the difference between market prices and cost-of-service rates for PGE's generation resources and thereby hold non-participating customers harmless during the transition period. Calpine Solutions/100, Higgins/10-11.

Additionally, it is important to recognize that Oregon's renewable portfolio standard ("RPS") applies to direct access customer loads. When direct access customers purchase electric energy from an ESS, the energy provided by the ESS must meet RPS requirements, which as applicable to the PGE service territory, requires that 15 percent of supply come from qualifying renewable electricity in calendar years 2018 and 2019, 20 percent of supply come from qualifying renewable electricity in calendar years 2020 through 2024, and 27 percent in calendar years 2025 through 2029. ORS 469A.052(1), 469A.065. Thus, while some customers may choose direct access service to increase their supply of renewable energy or to purchase 100-percent green energy, all direct access customers must purchase energy supply that complies with the minimum requirements of Oregon's RPS.

2. PGE's Direct Access Programs

PGE currently offers a one-year program, a three-year program, and five-year program. *See* Calpine Solutions/100, Higgins/7-10. Under the one-year and three-year programs, the customer pays transition charges calculated through the ongoing valuation method during the one-year or three-year term, but then must return to cost-of-service rates or re-enroll in another direct access program with a new set of transition charges. However, under the five-year program which has been offered since 2003, the customer pays transition charges through the ongoing valuation method for five years and thereafter no longer pays any charges for PGE's generation investments. *Id.*

PGE's five-year program is PGE's only direct access program that allows customers to eventually stop paying for PGE's generation services, and it also had the highest enrollment levels of any direct access program in the State of Oregon. *See id.* at 21. The five-year program is, in practical effect, a permanent opt out of cost-of-service rates. The customers in the five-year program must provide three years advance notice to return to cost-of-service rates, providing PGE more time to plan for that load than for new customers. *Id.* at 9. No customers have ever returned to cost-of-service from PGE's five-year program. *Id.* Consequently, the Commission has determined that customers in PGE's five-year program are "'effectively committed to service' under direct access" and should be excluded from the utility's planning "until they provide notice to return to cost-of-service rates." *See In the Matter of Pub. Util. Comm'n of Or.: Investigation Into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002, at 19 (Jan. 8, 2007).

The current five-year program charges the direct access customer the difference between PGE's cost-based rates for the generation portfolio from which the direct access customers

departed and the market prices at which PGE could sell the freed-up energy from that portfolio for the duration of the five year transition period. Calpine Solutions/100, Higgins/12-13. Under current Commission orders, the variable cost component of PGE's generation resources included in the transition adjustment is "locked in" for the full five-year transition period. *Id.* On the other hand, the fixed-cost component (e.g., fixed generation costs such as new plant added to rate base) will change as that element of PGE's rates changes for cost-of-service customers during the five-year transition period after the customer's commitment to the opt-out. *Id.* In other words, the transition adjustment for the five-year program charges the direct access customer the same fixed cost for PGE generation that the Company charges to its cost-of-service customers on the same rate schedule, even as that rate may change by Commission order during the course of the five-year transition period and even though the customer is in fact purchasing its generation services from an ESS during this time period. *Id.*

PGE's five-year program has been limited to five years of ongoing valuation calculations since the program was first offered in 2003. The most significant changes to the calculation mechanics were made in the last general rate case where PGE's direct access programs were at issue, Docket No. UE 262. In that case, the Commission approved a stipulation that allowed PGE to update the fixed generation charges assessed to participants of the five-year program during their five-year transition period, as described above, for five-year program participants commencing service in 2015 and thereafter. *In Re Portland General Electric Co., Request for a*

General Rate Revision, Docket No. UE 262, Order No. 13-459, at 9 (Dec. 9, 2013).[1] Prior to that time, the fixed generation component of the charge was also a forecasted rate, but as part of a compromise of several issues the parties agreed to allow an updated charge to ensure customers would pay for new resource acquisitions approved for cost-of-service rates during the five-year period. *See* UE 262 Stipulating Parties/200 at 3-4 (Aug. 20, 2013). However, the general approach of using a five-year ongoing-valuation calculation has been in place since 2003.

The UE 262 stipulation barred parties from proposing changes to PGE's direct access programs at least through the 2018 service year, and thus parties were free to propose changes to PGE's direct access programs in this general rate case.

3. Direct Access Issues Raised in this Proceeding

Several parties 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

[1] The stipulating parties in that case were PGE, Staff, CUB, the City of Portland, Fred Meyer Stores and Quality Food Centers, Division of Kroger Co., the Industrial Customers of Northwest Utilities (which is the predecessor to AWEC), Walmart Stores, Inc., and Noble Americas Energy Solutions LLC (which is the predecessor to Calpine Solutions). *Id.* at Appendix B. No party opposed the stipulation in that case.

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 to comprehensively resolve 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. However, 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.

CUB and AWEC are the only parties that have filed objections to the Stipulation. CUB argues the Commission should convert the five-year program to a 10-year program, and AWEC challenges the continuation of the 300-aMW cap on the three-year and five-year programs.

ARGUMENT

A. The Legal Standard Applicable to Review of 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 must "make an independent judgment as to whether any given settlement constitutes a reasonable resolution of the issues." *Id.* However, 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.

B. The Commission Should Approve the Stipulation Without Material Modification

Adoption of each of the elements of the Stipulation will result in an overall direct access program that establishes just and reasonable rates in the public interest. The Commission should reject arguments to revise certain elements of the Stipulation because the overall settlement proposal is reasonable. If any element of the Stipulation is rejected, the Commission would likely have to reexamine other elements of these complicated and contentious issues, as some Stipulating Parties would likely seek to reopen certain other elements of the Stipulation. As noted above, all parties retain the right to continue to work towards resolving the contested issues in future years because the Stipulation is of limited duration. Although the Commission should approve the Stipulation in its entirety, each element of the Stipulation is discussed separately below.

1. The Stipulation's Calculation Methodology Is Reasonable

The Stipulating Parties agreed to maintain the calculation methodology and five-year term of transition adjustments for the long-term opt-out program. The only minor caveat is that the Stipulating Parties agree to include the tax-related adjustments in Docket No. UM 1920,

which will ensure that direct access customers receive their share of any reduction in rates associated with the recent federal tax reduction. Stipulating Parties/500 at 3.

This aspect of the Stipulation simply preserves the status quo whereby existing PGE customers committing to stop purchasing generation services from PGE must pay transition charges calculated through an ongoing valuation calculation for a five-year transition period. Thus, the Stipulation resolves the complicated issues related to whether the Commission should devise a new rate methodology that attempts to calculate reasonable transition adjustment rates over a 10-year period instead of a five-year period – a point that has led to ongoing disputes in PacifiCorp's transition adjustment proceedings and even an appeal that is pending before the Oregon Court of Appeals. *See, e.g., In Re PacifiCorp dba Pacific Power, 2016 Transition Adjustment Mechanism*, Docket No. UE 296, Order No. 15-394, at 11-12 (Dec. 11, 2015), *appeal pending* Court of Appeals No. A161359.

Most significantly, if the Commission were to address how to calculate a 10-year charge based on the record in this proceeding, the Commission would also need to determine whether such charges would include a capacity credit. The record contains convincing evidence from multiple witnesses on the need for a capacity credit to be included in any 10-year charge for PGE. *See, e.g.,* Calpine Solutions/100, Higgins/4, 17-19; Calpine Solutions/200, Higgins/6; AWEC/400, Mullins/4-10. The Commission Staff's witness also supported the underlying premise of the capacity credit by testifying that the five-year program allows PGE to avoid costly capacity additions that increase rates for cost-of-service customers. Staff/800, Kaufman/41-42. This is a complicated issue that the Commission would have to resolve if it rejects the Stipulation's proposal to preserve the existing five-year charge.

Additionally, the Commission should not change the five-year charge without compelling evidence that such a change is necessary. The five-year transition charge has remained largely unchanged for over a decade and has resulted in Oregon's only successful direct access program to date. It is a basic tenet of administrative law that the Commission cannot abruptly change longstanding policy without a reasonable explanation for changed circumstances warranting the change. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 US 29, 42, (1983) (explaining that "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance"); *Drew v. Psychiatric Sec. Review Bd.*, 322 Or 491, 498-501, 909 P2d 1211 (1996) (holding agency orders must be supported by substantial evidence in the record and substantial reason). The Commission cannot lawfully convert the five-year program to a 10-year program without any credible evidence demonstrating that the five-year mechanism in place for the last 15 years has been inadequate for PGE's direct access program. The record here contains no evidence of any cost shifts that have occurred in the past 15 years, and AWEC demonstrated that non-participating customers are even better off as a result of the five-year program. *See* AWEC/400, Mullins/4-13.

Rejection of a 10-year charge is further compelled by the Commission's statutory obligation to remove obstacles to continued development of the competitive retail market. *See* ORS 757.646(1). Given that PGE's five-year program is the only Oregon direct access program with a modicum of success, a drastic and thinly justified revision to the program would violate that statutory directive.

CUB is the only party that continues to argue for conversion of the five-year program to a 10-year program, but its argument is misplaced for several reasons. First, the five-year period

provides more than adequate time to adjust PGE's resource plans and prevent cost shifts to non-participating customers. *See* Calpine Solutions/100, Higgins/15-16. Yet under CUB's proposal, direct access customers would continue paying transition charges based on PGE's escalating fixed-generation costs for newly acquired generation resources for 10 full years after committing not use any of PGE's generation resources.

Second, as noted above, CUB's proposal would require compelling evidence to overcome the presumption of reasonableness accorded to the Commission's approval of a five-year transition period for the past 15 years. Instead of presenting compelling evidence, however, CUB primarily cross references PGE's conclusory testimony regarding the need for a 10-year charge due to lower-than-expected load growth. *See* CUB/400. But PGE itself abandoned that position after numerous parties thoroughly rebutted it in responsive testimony, and ultimately PGE entered into the Stipulation preserving the status quo. As the record demonstrates, CUB's argument overlooks that PGE is actively retiring existing generation resources and its current integrated resource plan identifies a capacity need in the near term that can be avoided in whole or in part if additional load moves to the five-year direct access program. *See* Calpine Solutions/200, Higgins/4-5. The record contains no credible evidence that cost-shifting is likely to occur if the five-year transition charge is preserved. Numerous witnesses have emphasized this point, including the Commission Staff's witness. *See* Staff/800, Kaufmann/39-41 (responding to PGE's lack of credible evidence for 10-year charge); Calpine Solutions/100, Higgins/14-16 (same); AWEC/200, Mullins/44-45 (same); NIPPC/100, Fitch-Fleischman/10-12 (same); Calpine Solutions/200, Higgins/3-5 (responding to CUB's lack of any evidence of cost shifts); NIPPC/200, Fitch-Fleischman/3-5 (same).

Furthermore, as noted above, if the transition adjustment calculation is extended to 10 years as proposed by CUB, then the fixed generation costs PGE will avoid due to the loss of direct access loads must be credited against the fixed generation charge levied on opt-out customers in years six through 10 after the customer enters the opt-out program. To adopt a 10-year charge, the Commission would have to either include an offsetting capacity credit in the 10-year transition charge based on the evidence already presented or reopen the proceeding to take additional evidence on how to lawfully calculate a 10-year charge for PGE. But there is no need to do so because the Stipulation resolves this issue along with the other contentious issues as part of an overall result that is just and reasonable.

2. The Stipulation's Resolution of the Dispute Over ESS Scheduling is Reasonable

The Stipulating Parties agreed that PGE will withdraw its proposal to modify Rule K to allow PGE to petition the Commission to decertify an ESS for scheduling below the threshold that PGE had proposed. Stipulating Parties/500 at 3. No party objects to this aspect of the Stipulation, and it is supported by ample evidence in the record. *See* Calpine Solutions/100, Higgins/29-39 (refuting PGE's initial proposal); NIPPC/100, Fitch-Fleischmann/5-10 (same). This aspect of the Stipulation is just and reasonable.

3. The Stipulation's Resolution of the Disputed Program Cap Is Reasonable

The Stipulating Parties agreed to maintain the 300-aMW participation limit and the minimum eligibility requirements for PGE's long-term opt out program (Schedules 485, 489, 490, 491, 492, and 495). Stipulating Parties/500 at 3. This is a reasonable component of the overall settlement package in light of the fact that the 300-aMW cap has not been reached in 15 years.

AWEC proposes that the Commission modify the Stipulation either to eliminate the cap on the long-term opt-out program or, alternatively, increase the cap by 250 aMW to allow all eligible customers to participate. In support, AWEC cites the existence of one large customer that could not participate because its cumulative load exceeds the 64 aMW remaining for new entrants to the program beneath the 300-aMW cap. *See* AWEC/400, Mullins/2-3. Although Calpine Solutions advocated for eliminating or modifying the cap in its opening testimony, Calpine Solutions has conceded that argument at this time in light of the good faith compromise reached as part of the overall settlement package. Calpine Solutions/200, Higgins/6-7. In that context, the continuation of the current participation cap, as provided by the Stipulation, is reasonable and should be adopted by the Commission.

4. The Stipulation's Provision Transferring Freed-Up RECs Is Reasonable

The Stipulating Parties agreed that PGE will transfer RECs to the contracted ESS on behalf of each direct access customer served by that ESS during the years in which the customer pays transition charges to PGE. Stipulating Parties/500 at 4. The RECs supplied by PGE to the ESS will possess characteristics (e.g., vintage, proportion of bundled to unbundled, etc.) that would be required for RPS compliance by PGE if PGE were still serving the load of the ESS served in PGE's territory during the given compliance year. *Id.* This provision applies to customers choosing direct access starting with the 2020 service year (customers opting out in September 2019 or after). This agreement is similar to the Commission-approved REC agreement developed for PacifiCorp in Oregon. *Id.* No party opposes this aspect of the Stipulation.

The record contains detailed evidence supporting the REC transfer in Calpine Solutions' opening testimony. *See* Calpine Solutions/100, Higgins/25-29. To summarize, the problem that

currently exists is that the direct access customer pays for PGE's RPS-compliant generation while it pays transition charges but only receives an off-setting credit for the value of the freed-up energy, not the valuable renewable attributes of that renewable generation. *Id.* In effect, direct access customers currently pay twice for RPS compliance because they must also pay for RPS-compliant resources supplied by their ESS. *Id.* The freed-up RECs are a stranded benefit that should be accounted for in the transition adjustment calculation or otherwise returned to the customer. *Id.* This issue was contested through evidentiary hearings in multiple PacifiCorp transition adjustment mechanism proceedings before the Commission directed the parties to negotiate a resolution, which ultimately resulted in agreement to use of the transfer of RECs to the ESS substantially similar to the proposal contained in the Stipulation here. *Id.* at 27-28.

In sum, it is just and reasonable to resolve the freed-up REC issue for PGE's direct access programs as addressed the Stipulation.

5. The Stipulation's Changes to the Eligibility Criteria for the Long-Term Programs Are Reasonable

The Stipulation also resolves the numerous issues raised in this proceeding with three compromise agreements regarding the eligibility and change of location criteria.

First, the Stipulating Parties agreed that Schedule 485 customers (three-year and five-year program) that fall below the lower threshold for Schedule 485 eligibility (201 kW) may remain on long-term direct access if the decrease in demand is due to conservation efforts, demand-side management, distributed generation, or energy storage. Stipulating Parties/500 at 5. This agreement resolves an issue that has arisen with participating customers over time and appropriately removes an existing disincentive for direct access customers to engage in demand-side management and distributed generation. *See* Albertsons-Safeway/100, Waidelich/5.

Second, the Stipulating Parties also agreed that PGE will make a filing to revise its Rule K to allow for customers to transfer a direct access account to a new facility in the case where the initial facility is closed but retains nominal electric use for security or similar purposes. Stipulating Parties/500 at 6. This agreement provides a common-sense solution to another implementation issue that has frustrated the ability to transfer a direct access account from a closed facility to another facility owned by the same company. *See* Albertsons-Safeway/100, Waidelich/8.

Third, the Stipulation provides that PGE will address the $7,000 location change fee in the next general rate case. Stipulating Parties/500 at 6. This agreement is made in response to parties' concern that the fee is too large compared to similar fees in other jurisdictions. *See* Albertsons-Safeway/100, Waidelich/8. While the Stipulation does not resolve the issue in a final fashion, it provides a forum to soon resolve the issue.

As noted above, absent the Stipulation, there are over eight unresolved issues related to eligibility criteria. It is just and reasonable to resolve these complicated and contentious issues through the negotiated resolution embodied in the Stipulation.

CONCLUSION

In sum, the Stipulation comprehensively resolves numerous complicated direct access issues to result in direct access programs that are just and reasonable. Although some parties have challenged isolated aspects of the Stipulation, the overall settlement proposal is reasonable and should be approved by the Commission.

DATED this 19th day of October 2018.

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