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Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street, Suite 100
P.O. Box 1088
Salem OR 97308-1088


Re: UE 335 – PORTLAND GENERAL ELECTRIC COMPANY Request for a General Rate Revision

Dear Filing Center:

Enclosed is the Opening Brief of Portland General Electric Company Regarding Direct Access Issues for filing in the above-referenced docket.

Thank you for your assistance.

Sincerely,


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DCT:bop

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 335

In the Matter of:

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision.

**OPENING BRIEF OF PORTLAND
GENERAL ELECTRIC COMPANY
REGARDING DIRECT ACCESS
ISSUES**

Portland General Electric Company (“PGE”) submits this opening brief regarding direct access issues in this general rate case.

I. BACKGROUND

Five stipulations have been filed resolving all but four issues in this docket. Those four issues are being addressed on a separate procedural schedule. One of the five stipulations, resolving all direct access issues, has been contested and this brief is submitted in conformance with the briefing schedule for these issues.

The parties to this case raised a number of issues regarding direct access. The positions of each party have been set out in testimony.¹ Testimony was offered on direct access issues by PGE, Staff of the Public Utility Commission of Oregon (“Staff”), the Alliance of Western Energy Consumers (“AWEC”), the Oregon Citizens’ Utility Board (“CUB”), Albertson’s, LLC and Safeway, Inc. (“Albertson’s”), Fred Meyer Stores and Quality Food Centers (“Fred Meyer”), Calpine Energy Solutions, LLC (“Calpine Solutions”), and Northwest and Intermountain Power Producers Coalition (“NIPPC”). The issues, and their resolutions, are discussed below. As would be expected from such diverse parties, there was disagreement on a number of direct access related issues.

After multiple settlement discussions, most of the parties were able to agree on the settlement of all direct access related issues. The parties to the Partial Stipulation Regarding Direct Access Issues (“Stipulation”) are PGE, Staff, Fred Meyer, Albertson’s, and Calpine Solutions (collectively, the “Stipulating Parties”). The Stipulating Parties filed joint testimony supporting the Stipulation.² The Stipulating Parties other than Calpine also filed response

¹ The Unresolved Issues List, pages 3-4, filed by PGE on September 10, 2018, identified the testimony of the parties that address direct access issues.

² UE 335/Stipulating Parties/500.

testimony in support of the Stipulation.³ Calpine filed separate response testimony supporting the Stipulation.⁴ NIPPC is not a party to the Stipulation but filed testimony recommending that the Commission adopt the Stipulation.⁵

As discussed below, the terms of the settlement do not change the main components of PGE's direct access program. After much discussion, the Stipulating Parties agreed to not change the calculation and length of transition adjustments, the program participation cap, or Electricity Service Supplier ("ESS") scheduling requirements. These terms have been in place for many years, and will continue unchanged under the Stipulation. By approving the Stipulation, the Commission is not changing any of these significant terms.

As with all stipulations, the Stipulation reflects a compromise of disparate positions between the settling parties. Therefore, the resolution of each particular issue is part of the overall settlement and should be reviewed with that in mind rather than taking a piece-meal approach to each issue in isolation. Nevertheless, the Stipulating Parties all agree that the settlement reached would result in just and reasonable direct access terms and conditions, and they each request that the Commission adopt the Stipulation.⁶

CUB and AWEC did not join the Stipulation and dispute only individual parts of the Stipulation, for opposing reasons. CUB, in essence, argues that the Stipulation should provide more protection to remaining customers from cost shifting, and AWEC argues for the elimination or expansion of the direct access cap, which would add more risk of cost shifting to existing customers. The industrial customer advocate argues that the Stipulation goes too far to protect existing customers and leaves a customer ineligible for the long-term, opt-out program,

³ UE 335/Stipulating Parties/600.

⁴ UE 335/Calpine Solutions/200.

⁵ UE 335/NIPPC/200/5.

⁶ Partial Stipulation Regarding Direct Access Issues, ¶¶ 11-12 at 4.

and the residential customer advocate argues the Stipulation should have gone further to protect existing customers.

II. LEGAL STANDARD

“The Commission has broad powers to set just and reasonable rates.”⁷ Past Commission decisions have addressed the legal standard for contested stipulations. In the decision in docket UE 210, the Commission stated that it “has a statutory duty to make an independent judgment as to whether any given settlement constitutes a reasonable resolution of the issues.”⁸ That order continues:

We have recognized, however, that issues in a general rate case typically reflect judgments along a continuum of outcomes and can rarely be reduced to one “right” number in any cost category. When considering a stipulation, therefore, we may evaluate the validity of the rates based on “the reasonableness of overall rates, not the theories or methodologies used or individual decisions made.” We may accept a non-unanimous settlement agreement so long as we make an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates.⁹

Under this standard, the Stipulation should be approved.

III. STIPULATION TERMS

The Stipulation resolved the following issues:

Transition Adjustments. Paragraph 2 of the Stipulation states:

Except as provided herein regarding Docket UM 1920, there will be no change to either the calculation of transition adjustments or the number of years for transition adjustments as a result of this docket.

PGE had originally proposed that transition adjustments be extended to ten years rather than the current five years.¹⁰ As part of this overall settlement, the Stipulating Parties agreed that transition adjustments should continue to be calculated as they currently are, and that they should

⁷ Commission Order No. 10-022 at. 6 (Jan. 26, 2010).

⁸ *Id.*

⁹ *Id.* (footnotes omitted).

¹⁰ UE 335/PGE 1300/40-41.

continue to apply for five years. The result is no change to the existing program related to transition adjustments. CUB opposes this term of the Stipulation, and its arguments are addressed below.

Electricity Service Supplier scheduling. PGE had proposed changes to tariff terms regarding ESS scheduling practices. As part of the overall settlement PGE withdrew its proposed changes, so again there is no change to existing program.¹¹

Participation limit. Paragraph 4 of the stipulation deals with the participation limit. It says:

There will be no modification to either the 300 MWa participation cap or the minimum eligibility requirements for PGE's long-term direct access program for existing customers (Schedules 485, 489, 490, 491, 492, and 495). The Stipulating Parties acknowledge that:

- a. The Public Utility Commission of Oregon ("Commission") may modify the participation cap in docket AR 614 through adoption of a combined cap with the new large load direct access program; and
- b. The other terms of this Stipulation will remain in effect even if the Commission adopts a combined cap in AR 614 or otherwise changes the cap on the long-term direct access program for the existing loads as part of AR 614.

Again, the resolution of this issue is no change to the existing direct access program terms. The parties acknowledged that when the Stipulation was entered, the participation cap was part of the discussion in docket AR 614. In AR 614, the Commission made no change to the existing cap for direct access, and created a separate cap for new load direct access. So, again the result of this agreement is no change to existing terms. AWEC opposes this term, as discussed below.

Renewable Portfolio Standard ("RPS") and Direct Access. Calpine raised the issue of direct access customers paying twice for RPS related resources, in the transition adjustment and to their market supplier. Calpine proposed that during the years a customer is paying a transition charge under the direct access program, PGE should transfer the number of Renewable Energy

¹¹ Partial Stipulation Regarding Direct Access Issues, ¶ 3 at 2.

Certificates (“RECs”) covered by the transition charge to the ESS to be used on behalf of the direct access participating customer paying the transition charge. In resolution of this issue, and again as part of the overall settlement, the Stipulating Parties agreed that PGE will transfer RECs to each ESS on behalf of customers during years the customer is subject to transition adjustments.¹² This change is applicable to customers opting out of cost of service rates beginning in September 2019.

Term. As has been done in previous settlements regarding direct access issues, the Stipulating Parties agreed that they would not propose changes to the direct access terms for service years 2020 and 2021.¹³ Part of the overall settlement is to have the agreed-upon terms apply for at least a minimum period. The agreement recognizes that direct access issues may arise in other proceedings, and specifically allows parties to continue to advocate their positions in UM 1953, PGE’s green tariff proposal, and in other dockets opened by the Commission. This, again, is a continuation of past practice regarding direct access.

UM 1920 Adjustment. Paragraph 7 of the Stipulation addresses how the outcome of docket UM 1920 will be applied to direct access customers. UM 1920 is the deferral application filed by PGE in late 2017 regarding the recently enacted federal income tax changes. The Stipulation provides that the transition adjustments for both long-term and one-year opt-out customers will include an amortization of that UM 1920 deferral in the years in which it is amortized in rates. This provision addresses the one-time impact of UM 1920. It is not a change to direct access, but was dealt with in this Stipulation because it will impact direct access customers in the next couple of years.

¹² Partial Stipulation Regarding Direct Access Issues, ¶ 5 at 2.

¹³ Partial Stipulation Regarding Direct Access Issues ¶ 6 at 2-3.

Schedule 485. Paragraph 8 of the Stipulation addresses changes to Schedule 485. These issues were originally raised by Albertson's. Albertson's concern was that a Schedule 485 customer may fall below the 201 kW eligibility threshold for direct access due to conservation efforts, demand side management, or other causes. In response, the Stipulation provides for such Schedule 485 customers to remain on direct access if certain requirements are met. The Stipulation also addresses how customers that do not meet the requirements, and are migrated to Schedule 583, will be charged. The resolution addresses Albertson's issues, does not discourage conservation efforts, and, in the context of the overall settlement of all direct access issues, is supported by all the Stipulating Parties.

Rule K. This issue was also raised by Albertson's. It involves the direct access customer being authorized to transfer a direct access account to a different location when the original location closes. Paragraph 9 of the Stipulation provides that PGE will seek modification of its tariff Rule K to permit a change of location of an ESS-served account to occur before the account is closed, provided the existing location is idle or has only nominal use and the customer agrees that the original account returns to cost of service. It will be the customer's burden to demonstrate that the existing location is idle or with nominal use. Like the Schedule 485 issues, this addresses Albertson's relocation issues, and in the context of the overall settlement of all direct access issues, is supported by the Stipulating Parties.

Schedule 600 Fee. This is the final issue resolved by the Stipulation. Paragraph 10 of the Stipulation addresses PGE's Schedule 600 location change fee. The Stipulation provides that PGE will address this fee in its direct testimony in its next rate case.

Stipulation Summary. The Stipulation leaves the major components of PGE's existing, long-standing and successful direct access program unchanged. The transition adjustment

methodology and five year term remain unchanged. ESS scheduling provisions remain unchanged. Participation limits remain unchanged. During the transition period, RECs will be transferred to ESSs for accounts opting out beginning next year. As done previously, the Stipulating Parties will not, with exceptions, propose changes to the direct access program for service years 2020 and 2021. The one-time impact of UM 1920 is addressed. Some changes requested by direct access customers to Schedule 485 eligibility, and Rule K account site relocation have been adopted. Schedule 600 charges will be addressed in PGE's next rate case. Those are all of the changes contained in the Stipulation. It is largely a continuation of PGE's long-standing, and successful direct access program. The terms are well within the continuum of outcomes advocated in testimony in this docket. The terms of the Stipulation are reasonable, and will result in just and reasonable prices and terms.

IV. OBJECTIONS

CUB. CUB objects to only one issue in the Stipulation. CUB continues to argue for transition adjustments for ten years rather than five to protect existing customers from undue cost shifting when large non-residential customers opt out of cost of service on a long-term basis. CUB's testimony opposing the Stipulation provides a brief and accurate history of direct access in Oregon.¹⁴ With respect to this issue, CUB argues that when direct access was enacted it was thought that cost of service loads would continue to grow such that resources no longer needed by direct access participating customers would be used to serve that growth, and that is no longer the expectation. Because of this, CUB argues, longer transition adjustments are needed to protect existing customers from cost shifts when large customers leave. Calpine¹⁵ and Fred

¹⁴ UE 335/CUB/400/3.

¹⁵ UE 335/Calpine Solutions/200/4-5.

Meyer¹⁶ disagree with CUB's analysis and recommendation. PGE originally proposed ten-year transition adjustments. As part of the overall settlement, PGE agreed to five-year transition adjustments, and believes that the result of the overall settlement in this docket is fair and reasonable.

AWEC. In contrast, AWEC specifically supports maintaining five years of transition adjustments but objects to the long-standing, unchanged, 300 MWa participation cap. AWEC ignores the long history of direct access, the legal requirement on the Commission to prevent undue cost shifting, and provides flawed analysis in support of its arguments.

ORS 757.607 requires the Commission to ensure that direct access programs “not cause the unwarranted shifting of costs to other retail electricity consumers of the electric company.”¹⁷ One way the Commission has fulfilled this mandate is through a participation cap. The last time the Commission addressed PGE's direct access program was in Docket UE 262, PGE's 2014 test year rate case. In that docket, the parties stipulated to a number of direct access related issues, including that the 300 MWa cap on direct access participation would remain at 300 MWa.¹⁸ The parties also agreed that for four years no party would seek changes to the direct access program. The Commission concluded that the stipulated resolution “provide a reasonable and just means of balancing the interests of direct access and cost-of-service customers.”¹⁹ The same is true in this docket.

It should also be remembered that PGE's long-term opt out program is not necessary to meet any particular requirement of the Commission rules. OAR 860-038-0275(5) requires: “At least once each year, electric companies must offer customers a multi-year direct access program

¹⁶ UE 335/Stipulating Parties/600/10-11.

¹⁷ ORS 757.607(1).

¹⁸ Commission Order No. 13-459 at 10 (Dec. 9, 2013).

¹⁹ *Id.*

with an associated fixed transition adjustment.” This requires that utilities offer a multi-year fixed transition adjustment offering. PGE’s three-year, opt-out program meets that obligation. An opt-out program under which the transition adjustments end, like PGE’s five-year program, is not required. The Commission has adopted such an optional program with limited transition adjustments for PGE and it is well within the Commission’s authority to set limits in the form of a participation cap to limit cost shifting. The participation cap for PGE is 300 MWa, and has been since the program’s inception. Yet, AWEC argues that it is now somehow inappropriate.

AWEC’s argument is in essence that since a single customer has load (spread over many accounts) in excess of the remaining room under the cap, that the cap is somehow discriminatory. That is incorrect. The very purpose of a cap is to limit the amount of load that can leave cost of service – a head nod to the prevention of undue cost shifting. The very nature of a cap means that, at some point, the program may close to further participation with the balance between allowing participation in the competitive market and preventing unwarranted cost shifting. And it is basic arithmetic that the largest customers will run out of room for all of its accounts under the cap soonest. That is not discriminatory, but the cap doing just what it was intended to do. If AWEC’s arguments were accepted, any cap would be discriminatory – no matter what the size, as the cap was approached, the largest customers would no longer fit.

It is also significant that the single customer to which AWEC refers is not precluded from going to direct access. That customer has accounts that qualify and fit within the participation limit.²⁰ In addition, that customer, as all other eligible customers, has had sixteen annual direct access windows in which they could have chosen direct access.²¹

²⁰ UE 335/Stipulating Parties/600/5.

²¹ *Id.* at 5-6.

There is real harm to existing customers without a reasonable cap. While long-term, opt-out customers pay transition charges, those end, leaving existing customers with the expense of resources acquired before the long-term opt out customers chose direct access. If large blocks of load could leave, that would leave large blocks of resources behind. Existing customers must be protected from undue cost shifting.

AWEC attempts to support its argument by stating that direct access does not shift costs. Their analysis is flawed. PGE's testimony details the questionable assumptions and errors in AWEC's analysis.²² AWEC's basic premise is that existing customers are no worse off due to direct access. If those customers had not opted out of cost of service over the last sixteen years, according to AWEC, PGE would have incurred costs to serve those customers based on today's costs for a new resource – not the cost of resources when PGE stopped planning for that departing load. AWEC completely ignores that PGE would have acquired resources years ago at lower costs. As an example, PGE showed that the costs of a baseload resource acquired nine years before Carty was about half the cost. AWEC also ignores that the revenue requirement associated with those capital resources decreases for ratemaking purposes. The resources are depreciated over time and customer prices are set based on the depreciated book value. Each rate case, those generating resources are worth less than before, on a book value basis.

In addition, AWEC used a hypothetical cost to supply the customers currently in the long-term, opt-out program that vastly overstates the supply that would be needed. AWEC incorrectly used cost numbers from the Carty plant in its analysis to derive a hypothetical cost to serve 223 MWa load.²³ However, rather than using a ratio of the Carty plant, a 440 MW plant,

²² UE 335/Stipulating Parties/600/6-9.

²³ UE 335/Stipulating Parties/600/7-8.

AWEC used the cost of the entire plant to supply 223 MWa of customers.²⁴ The cost numbers are unreasonable.

AR 614. The Commission has recognized the potential cost shifting of direct access in its recent order in docket AR 614, the rulemaking docket for new load direct access. In that order, the Commission established a participation cap for new load direct access, and declined to combine the new load direct access participation cap with the existing direct access participation cap. The order states:

Part of our justification for limiting the size of this program is the reality that cost-of-service customers are increasingly relied upon to finance system improvements that impose near-term costs to adapt the system to new utility and customer-sited technology intended to lead to long-term economic and environmental benefits for all customers.²⁵

The same considerations apply here. Existing customers are asked to bear costs to adapt the system, and comply with new environmental targets, and the more load that goes to direct access, the more costs existing customers will need to bear. The additional new load direct access cap adopted in AR 614, about 120 MWa for PGE, increases the potential problem, and is another reason the existing cap should not be increased.

AWEC's basic premise is wrong, and its proposal to greatly increase the participation cap would harm non-participating customers.

V. CONCLUSION

The Direct Access Stipulation retains the main components of PGE's current direct access program. In particular, the transition adjustment calculation and duration, and the participation limit, are unchanged. The Stipulation resolves issues raised by Albertson's and Calpine regarding some service terms. The Stipulation was entered into and supported by

²⁴ *Id.*

²⁵ Commission Order No. 18-341 at 7-8 (Sep. 14, 2018).

disparate parties all agreeing that if approved the terms of the Stipulation will result is just and reasonable terms of service, and requesting approval by the Commission. The Stipulation is a reasonable resolution of all direct access issues and should be approved in its entirety.

Dated this 19th day of October, 2018.

Respectfully submitted,



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