

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of Public Utility Commission of) AR 617
Oregon: Updates to Renewable Energy Portfolio)
Compliance Standards, Implementing) CALPINE ENERGY SOLUTIONS,
Legislation) LLC'S AND ALBERTSONS
) COMPANIES, INC.'S RULEMAKING
) COMMENTS

INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) and Albertsons Companies, Inc. (“Albertsons”) hereby submits comments on the proposed rule before Oregon Public Utility Commission (“Commission” or “OPUC”) related to renewable energy certificates (“RECs”). With one exception, these comments are substantively identical to the comments submitted by the same parties on March 5, 2021, at the time of the Staff Report proposing issuance of a notice of proposed rule, and the comments are resubmitted to ensure inclusion in the rulemaking record. The one notable addition in these comments is that these comments also include a proposed revision to the rules, which is attached to these comments, to address the issue raised in this comments.

As explained below, Calpine Solutions and Albertsons request that the Commission clarify in this rulemaking that the Commission will approve the use of transferred freed-up bundled RECs as bundled RECs for renewable portfolio standard (“RPS”) compliance purposes when retired by the recipient electricity service supplier (“ESS”).

Calpine Solutions is an ESS affected by the issue raised in these comments, and Albertsons Companies is affected through the participation of its Albertsons and Safeway stores as customers in Oregon's direct access programs.

After Calpine Solutions raised this issue in its recent RPS compliance filing (Docket No. UM 2104), Staff and Calpine Solutions each agreed the issue would be more appropriately addressed in this rulemaking. Although Staff discussed the issue in its Staff Report proposing to commence formal rulemaking, Staff recommended against providing the clarification sought by Calpine Solutions in the administrative rule due to Staff's conclusion that existing statutes would not allow for transferred RECs to remain bundled.

Contrary to the conclusion in the Staff Report, the Commission is fully empowered under the direct access law and the RPS to approve the transferred bundled RECs as bundled when retired by the recipient ESS on the customers' behalf. The RECs at issue are "freed up" from PacifiCorp's or Portland General Electric Company's ("PGE") generation portfolio by movement of customers to direct access and transferred to such customers' ESS(s) by the utilities. This transfer of freed-up RECs resulted from multiple contested proceedings wherein Calpine Solutions, PacifiCorp, Staff, and other stakeholders agreed the REC transfer is an acceptable means by which to return to direct access customers the stranded benefit of the freed-up RECs for which such customers continue to pay through transition adjustment charges.

In order to ensure that the full regulatory value of this stranded benefit is returned to direct access customers, the Commission should clarify in its administrative rules that these transferred freed-up bundled RECs maintain their bundled nature for RPS compliance purposes when retired by the ESS, thereby preserving the benefit of the bargain for the direct access customers. Without such clarity, the ESS will not be able to rely upon such transferred RECs for

its bundled REC requirement, and the direct access customer would have to, in effect, pay again for additional RECs the ESS would be required to acquire.

COMMENTS

As explained below, the freed-up bundled RECs are transferred to the ESS in order to return to the direct access customers the stranded benefit of the utility's renewable portfolio for which the customers pay in transition charges, and recognizing the bundled nature of such transferred RECs is consistent with Oregon's direct access policies. Additionally, the RPS provisions support the conclusion that the transferred RECs should maintain their bundled status if retired by the ESS for RPS compliance associated with its customers' load. Further, given the more limited use of unbundled RECs for ESSs beginning in 2021, ESSs need regulatory certainty that the Commission will approve the use of transferred freed-up bundled RECs as bundled RECs for RPS compliance purposes when retired by the recipient ESS.¹

1. Freed-Up RECs Are Stranded Benefits that Are Transferred from the Utility to the ESS on Behalf of the Direct Access Customer to Ensure Compliance with Oregon's Direct Access Law

Under a retail direct access program, the direct access customer continues to use the utility's distribution system but obtains energy from another retail supplier. Oregon's direct access law ("S.B. 1149") instructs the Commission to develop policies to "eliminate barriers to the development of a competitive retail market structure[.]"² The law further addresses stranded

¹ Beginning in compliance year 2021, the categorical exemption from the RPS's limitations on the use of unbundled RECs is eliminated for ESSs, and ESSs must meet at least 80 percent of their RPS compliance with the use of bundled RECs, subject only to more limited exceptions. ORS 469A.145. The exceptions to the bundled REC requirement are allowances for unlimited use of unbundled RECs from net metering facilities and from qualifying facilities located in Oregon. ORS 469A.145(2)-(3).

² ORS 757.646(1).

costs as “uneconomic utility investments.”³ But the law also contemplated stranded benefits, which are characterized as “economic utility investments.”⁴ The overarching goal of the direct access law and the Commission’s transition adjustment rates, as reflected in the Commission’s administrative rules, is to ensure direct access customers pay transition charges for stranded costs but also receive the offsetting value of stranded benefits.⁵ The policy of transferring freed-up RECs to the ESS furthers that overarching goal.

In transition adjustment mechanism (“TAM”) Docket Nos. UE 296, UE 307, and UE 323, Calpine Solutions advocated that direct access customers should receive the benefit of RECs generated by the utility’s RPS resources paid for by the direct access customers.⁶ RECs are freed up by a direct access election because the utility’s RPS obligation is reduced proportionately to a direct access customer’s load when that customer migrates to direct access and purchases RPS-compliant energy through an ESS.⁷ Additionally, during the years in which the direct access customer continues to pay transition charges, the direct access customer continues to pay for the utility’s RPS-compliant resources through the transition adjustment charges.⁸ For each MWh of electric energy produced by the RPS-compliant resources in the utility’s portfolio, the resource also produces a REC.⁹ However, despite including the value of the freed-up *energy* in the transition adjustment calculation, Calpine Solutions pointed out that

³ ORS 757.600(35).

⁴ ORS 757.600(10).

⁵ See OAR 860-038-0160(1) (stating, “each Oregon retail electricity consumer of an electric company will receive a transition credit or pay a transition charge equal to 100 percent of the net value of the Oregon share of all economic utility investments and all uneconomic utility investments of an electric company”)

⁶ See, e.g., *Calpine Solutions’ Response Br.*, Docket No. UE 323, at pp. 7-14 (Sept. 26, 2017).

⁷ ORS 469A.052(1)(b), 469A.065.

⁸ See, e.g., UE 323 Calpine Solutions/100, Higgins/17-18.

⁹ *Id.*

the traditional transition adjustment regime provided no credit for the value of the freed-up RECs.¹⁰ Further, the direct access customers pay their ESS for the RECs necessary to meet the RPS obligation tied to those customers' load, which effectively resulted in double payment for RPS compliance as a condition of participating in direct access.¹¹

After litigating this issue in several proceedings, the parties could not agree on the appropriate way to calculate a value for a reasonable REC credit to include in the transition adjustment calculation, and ultimately determined that a physical transfer of the freed-up RECs was the superior method to address this inequity. Specifically, Docket No. UE 323, the Commission adopted a temporary REC credit in PacifiCorp's transition adjustment calculation, but it directed the parties to work to develop a method of transferring the freed-up RECs to be retired on behalf of the direct access customer.¹² The Commission explained: "We recognize that the valuation of RECs has been a primary point of disagreement among the parties for three TAM proceedings, with parties explaining the REC markets are volatile and illiquid."¹³ However, "[p]arties believe that REC transfers may be a simpler solution, and we are interested in this option."¹⁴ The Commission directed: "In the 2019 TAM, the company is to present its best proposal for REC transfers, so that parties may weigh in and build a full record on this issue that will enable us to decide whether REC transfers are practical and feasible."¹⁵

¹⁰ *Id.*

¹¹ *Id.* at 17.

¹² *In Re PacifiCorp, dba Pacific Power, 2018 Transition Adjustment Mechanism*, Docket No. UE 323, Order No. 17-444, at 19 (Nov. 1, 2017).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

In response, the parties developed a mutually acceptable policy to transfer the freed-up RECs to the ESS, which the Commission approved in the next TAM proceeding.¹⁶ Under the agreement, PacifiCorp transfers RECs to the ESS to be retired on behalf of the direct access customer served by that ESS during the years for which that the customer is paying transition adjustment charges to PacifiCorp.¹⁷ PacifiCorp transfers RECs “on an annual basis to a direct access consumer’s ESS,” and the “RECs will be transferred to a WREGIS account identified by the direct access customer’s ESS.”¹⁸ The intent of the agreement was that the RECs would be sufficient to meet the RPS compliance requirement – including at least 80 percent bundled and up to 20 percent unbundled proportions – if that customer were still served by PacifiCorp. The Commission-approved agreement specifies, “Transfers will begin following the first year of direct access, to meet the ESS’s renewable portfolio standard (RPS) compliance obligation[,]” and that “[a]t least 80 percent of the transferred RECs will be RECs that, before the transfer, were considered bundled.”¹⁹ However, the agreement did not address whether the transferred bundled RECs would remain “bundled” for purposes of RPS compliance once retired by the ESS.²⁰

Subsequently, parties to Portland General Electric Company’s (“PGE”) most recent general rate case agreed to adopt the REC transfer policy for PGE’s direct access programs.²¹

¹⁶ *In Re PacifiCorp, dba Pacific Power, 2019 Transition Adjustment Mechanism*, Docket No. UE 339, Order No. 18-421, at 7 (Oct. 26, 2018). The agreed-to REC transfer was developed in workshops and proposed in PacifiCorp’s opening testimony. *Id.* at App. A, p. 8, ¶ 28; UE 339 PAC/100, Wilding/46-47.

¹⁷ UE 339 PAC/100, Wilding/46-47.

¹⁸ UE 339 PAC/100, Wilding/46.

¹⁹ UE 339 PAC/100, Wilding/46-47.

²⁰ UE 339 PAC/100, Wilding/47. PacifiCorp expressly disclaimed any warranty regarding the nature of the RECs or any claims made after they were transferred. *Id.*

²¹ *In Re Portland General Elec. Co.*, Docket No. UE 335, Order No. 19-129, App. B, p. 2, ¶ 5 (April 12, 2019).

The Commission also approved the REC transfers for PGE's direct access customers, which will apply for customers enrolling in PGE's direct access programs beginning in 2020.²² As with the PacifiCorp agreement, 80 percent of the RECs transferred to the ESS would be bundled RECs prior to the transfer, as required to meet the RPS obligation for that load.

It is clear that the transferred unbundled RECs would remain unbundled upon the transfer to the ESS, but clarification is warranted in the administrative rules that the transferred bundled RECs will also retain their bundled nature if retired by the recipient ESS. The transferred bundled RECs at issue are transferred to an ESS solely for the purpose of returning the stranded benefit of the RECs to the direct access customers who continue to pay for the underlying PacifiCorp or PGE RPS resources through transition charges. The ESS is, in effect, acting as the agent for the customer in this Commission-approved mechanism to return stranded benefits to the customer under Oregon's direct access law. Maintaining the bundled nature of the RECs for RPS compliance purposes upon retirement by the recipient ESS for the customer is the only way to ensure that the full value of the stranded benefit is returned to the direct access customers and preserves the benefit of the bargain. Furthermore, beginning in RPS compliance year 2021, the customers would be financially harmed if such transferred RECs lose their bundled nature for RPS compliance purposes because the ESS would need to secure additional RECs that would satisfy the limitations on the use of unbundled RECs for RPS compliance. Thus, the Commission should confirm the bundled nature of the transferred RECs for RPS compliance purposes to ensure the full value of the freed-up RECs is captured by the direct access customers entitled thereto.

²² *Id.*

2. The RPS Should Be Construed to Maintain the Bundled Nature of the Bundled Freed-Up RECs Transferred to an ESS for the Benefit of Direct Access Customers

In addition to preserving the value of stranded benefits for direct access customers, recognizing the bundled nature of the transferred RECs upon retirement by the recipient ESS is consistent with the requirements of Oregon’s RPS. The Staff Report interprets the applicable statutes too narrowly to conclude otherwise.

Under Oregon’s RPS, bundled RECs may be used without demonstrating a source-to-sink delivery of the qualifying electricity from the generator to the customer load. The RPS defines “bundled renewable energy certificate” as follows:

[A] renewable energy certificate for qualifying electricity that is acquired:

- (a) By an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the renewable energy certificate that was issued for the electricity; or
- (b) By an electric utility by generation of the electricity for which the renewable energy certificate was issued.²³

But the law provides several different options for the delivery point to which the qualifying electricity must be delivered in order for the REC to be used as a bundled REC, including Bonneville Power Administration’s system, an electric utility’s transmission system, a delivery point designated by the electric utility for subsequent delivery to its system, or mutually agreed delivery point between an electric utility and ESS.²⁴ Critically, once the REC qualifies as bundled, the RPS expressly disclaims a requirement for source-to-sink delivery of the qualifying electricity to the load. The RPS provides: “The validity of a bundled renewable energy

²³ ORS 469A.005(4).

²⁴ ORS 469A.135(1)(b).

certificate for purposes of compliance with the applicable renewable portfolio standard *is not affected by the substitution of any other electricity for the qualifying electricity at any point after the time of generation.*”²⁵ Staff’s analysis fails to address or take into account this emphasized language or the overlapping requirements and policy of the direct access laws to return stranded benefits.

Instead, the Commission should construe the relevant statutes to give effect to the intent of all provisions and conclude that the RECs at issue should be treated as bundled RECs upon retirement by a recipient ESS.²⁶ Each of RECs would be properly recorded as a bundled REC in PacifiCorp’s or PGE’s RPS accounting systems and, presumably in WREGIS. The RECs would then be transferred to the ESS’s WREGIS account to be retired on behalf of ESS’s Oregon direct access customers in PacifiCorp’s or PGE’s service territory in accordance with the regulatory mechanism to return the stranded benefits to those customers. Because the RPS statute does not require that the ESS also deliver the underlying qualifying electricity to such customers, the bundled RECs should retain their bundled nature upon retirement by an ESS. Construing the RPS in this manner is not only permissible, but it is also the only way to ensure the full stranded benefit is returned to the direct access customer in accordance with the direct access statutes and current regulatory scheme.

CONCLUSION

For the reasons stated above, Calpine Solutions and Albertsons request that the Commission clarify in this rulemaking that the Commission will approve the use of transferred

²⁵ ORS 469A.130(2) (emphasis added).

²⁶ See *Liles v. Damon Corp.*, 345 Or 420, 424, 198 P3d 926, 928 (2008) (noting obligation of the courts “to give meaning to all parts of those statutes” in issue); ORS 174.010 (“where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all”).

freed-up bundled RECs as bundled RECs for RPS compliance purposes when retired by the recipient ESS.

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Attachment No. 1 – Transferred Freed-Up Bundled RECs Provision

OAR 860-083-0060 Use of Bundled Renewable Energy Certificates Transferred By an Electric Company to an Electricity Service Supplier on Behalf of Direct Access Customers

For purposes of an electricity service supplier's compliance with a renewable portfolio standard, bundled renewable certificates transferred to an electricity service supplier may be retired as bundled renewable energy certificates and do not become unbundled renewable energy certificates when:

- (1) the renewable energy certificates are transferred from an electric company to the electricity service supplier for the compliance year preceding the date of transfer on behalf of retail electricity consumers that paid transition adjustments to the electric company during the compliance year preceding the date of transfer;
- (2) at the time of the transfer, the renewable energy certificates satisfy the definition of bundled renewable energy certificate, in ORS 469A.010(4)(a) or (b), and could have otherwise been retired as qualifying bundled renewable energy certificates by the electric company for compliance year preceding the date of transfer; and
- (3) the electricity service supplier retires the renewable energy certificates for the compliance year preceding the date of transfer from the electric company.

*This proposal would place this provision within the current gap in the administrative rules at OAR 860-083-0060, but different locations within the rules may also be suitable.