

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP,	)	UE 399
DBA: PACIFIC POWER,	)	
	)	CALPINE ENERGY SOLUTIONS,
Request for General Rate Revision	)	LLC'S OPENING BRIEF
_____	)	

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## I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits its opening brief to the Public Utility Commission of Oregon (“OPUC” or “Commission”) in this matter. Calpine Solutions is a Commission-certified electricity service supplier (“ESS”) under Oregon direct access law, and it intervened in this proceeding with the intent of ensuring reasonable rates and policies for eligible customers to participate in direct access programs. All issues Calpine Solutions raised in this proceeding have been resolved through stipulation except one remaining issue—a dispute between PacifiCorp and Calpine Solutions regarding the rights of a direct access customer in the three-year program to enroll in the five-year program.

As explained below, Calpine Solutions recommends that the Commission clarify that a direct access customer enrolled in PacifiCorp’s three-year opt-out program can switch to PacifiCorp’s five-year opt-out program under the going-forward terms of the five-year program, without being subject to the Returning Service Payment for customers who return to cost-of-service rates or any other penalty, after the end of the first or second full year in the three-year program. A dispute has arisen as to this issue affecting direct access customers, and the Commission should provide clarity in this proceeding. To be clear, Calpine Solutions agrees that such a customer would have to restart paying five years of applicable charges under the five-year program, including Schedule 200, applicable transition adjustments, and the consumer opt-out charge, upon commencement of service in the five-year program. But because such customer would remain committed to direct access service and not return to cost-based generation service, there is no basis to bar the customer from enrolling in the five-year program or to assess any penalty charges, such as the Returning Service Payment for customers that return to cost-of-

service rates.

Separately, Calpine Solutions is a signatory to, and recommends that the Commission approve, the Second Stipulation filed by several parties on August 25, 2022 and the Third Partial Stipulation filed by several parties on September 21, 2022.

## II. REGULATORY BACKGROUND

### A. Oregon's Direct Access Law and Regulations.

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.<sup>1</sup> Oregon's direct access law requires that all nonresidential retail customers be allowed direct access to competitive markets by purchasing generation services from a Commission-certified ESS.<sup>2</sup> The law specifically instructs the Commission to develop policies to "eliminate barriers to the development of a competitive retail market structure between electricity service suppliers and electric companies."<sup>3</sup>

The Commission may impose transition charges or provide transition credits to customers electing direct access to prevent "the unwarranted shifting of costs to other retail electricity consumers of the electric company."<sup>4</sup> A transition charge accounts for an "uneconomic utility investment," which is a utility investment that was prudent when it was incurred, but the full costs of which cannot be recovered as a result of direct access without transition charges.<sup>5</sup>

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<sup>1</sup> See generally ORS 757.600 *et seq.*

<sup>2</sup> See ORS 757.600(6), (16), -601(1), -649(1)(a).

<sup>3</sup> ORS 757.646(1).

<sup>4</sup> ORS 757.607(1).

<sup>5</sup> ORS 757.600(35).

Conversely, a transition credit returns to the departing direct access customer the benefits of an “economic utility investment,” which is an investment that was prudent at the time it was incurred but the full benefits of which are no longer available to the direct access customer without transition credits.<sup>6</sup>

## **B. PacifiCorp’s Direct Access Programs.**

PacifiCorp currently offers one-year, three-year, or five-year direct access programs to existing customers.<sup>7</sup> The election window for enrollment in each program is held beginning on November 15 each year, with service in the selected program to commence on the following January 1.<sup>8</sup> That timing allows for the transition charges or credits for PacifiCorp’s direct access programs to be calculated at the conclusion of the annual TAM, just prior to the annual election window, and at the same time that PacifiCorp’s net power costs are updated for cost-of-service rates.<sup>9</sup> At the conclusion of the one-year or three-year term the customer must return to cost-of-service or elect a new direct access option.<sup>10</sup> In contrast, under the five-year program, a qualified customer pays applicable program charges for five years, but is then no longer subject to

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<sup>6</sup> ORS 757.600(10).

<sup>7</sup> Calpine Solutions/100, Higgins/9-10; PacifiCorp also offers a New Load Direct Access program to new customers under Schedule 293, but that program is not relevant to disputed issues in this proceeding.

<sup>8</sup> See Schedule 294, p. 1; Schedule 295, p. 1; Schedule 296, p.2; OAR 860-038-275.

<sup>9</sup> *In the Matter of PacifiCorp, dba Pacific Power: Transition Adjustment, Five-Year Cost of Service Opt-Out*, OPUC Docket No UE 267, Order No 15-060, at 12 (Feb. 24, 2015); *In the Matter of Pacific Power and Light Co. (dba PacifiCorp) Request for a General Rate Increase in the Company’s Oregon Annual Revenues*, Docket No UE 170, Order No 05-1050, at 21-22 (Sept. 28, 2005).

<sup>10</sup> Calpine Solutions/100, Higgins/9-10

transition adjustments and is effectively committed to permanent direct access.<sup>11</sup> All direct access customers pay PacifiCorp for distribution delivery service and applicable riders. The transition adjustment is applied either through Schedule 294, Schedule 295, or Schedule 296.<sup>12</sup> Schedule 294 is applied to customers who choose a one-year direct access option, Schedule 295 is applied to customers who choose a three-year direct access option, and Schedule 296 is applied to customers who select the five-year opt-out.<sup>13</sup>

### III. LEGAL STANDARD

When the Commission sets rates and terms of service for a public utility, it is performing a quasi-legislative function.<sup>14</sup> Oregon law requires that rates assessed and terms of service offered to direct access customers in each final Commission order be fair, just and reasonable.<sup>15</sup> The burden of proof is borne by the utility throughout the proceeding.<sup>16</sup> Thus, the Commission has a statutory duty to ensure that the direct access rates and terms of service approved in this docket are just and reasonable and provide eligible customers with a meaningful opportunity to access competitive retail markets.

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<sup>11</sup> Calpine Solutions/100, Higgins/9-10; *See also In the Matter of PacifiCorp, dba Pacific Power: Transition Adjustment, Five-Year Cost of Service Opt-Out*, OPUC Docket No. UE 267, Order No 15-060, at 1 (Feb. 24, 2015).

<sup>12</sup> Calpine Solutions/100, Higgins/12-13.

<sup>13</sup> Calpine Solutions/100, Higgins/12-13.

<sup>14</sup> *Gearhart v. Pub. Util. Commn. of Or.*, 356 Or 216, 221, 339 P3d 904 (2014).

<sup>15</sup> ORS 756.040(1), 757.210(1)(a).

<sup>16</sup> ORS 757.210(1)(a); *In the Matter of Portland General Electric Co.: 2012 Annual Power Cost Update*, OPUC Docket No UE 228, Order No 11-432, at 3 (Nov. 2, 2011).



#### IV. ARGUMENT

**A. Three-Year Program Issue: The Commission Should Clarify that Three-Year Customers May Enroll in the Five-Year Program Subject to Paying Five Years of Transition Charges but Without Paying the Returning Service Payment.**

The Commission should clarify in this proceeding that customers enrolled in the three-year program may enroll in the five-year program prior to completion of three years subject to committing to paying five years of applicable charges for the five-year program but without paying PacifiCorp's Returning Service Payment or other penalties. Without such clarification from the Commission, PacifiCorp's unreasonable position to the contrary will stand as an obstacle to reasonable use of the Commission's direct access programs.

If a customer selects a direct access program, the customer's ability to return to cost-of-service rates is generally set forth in PacifiCorp's rate schedules.<sup>17</sup> As currently written, it is undisputed that PacifiCorp's programs allow one-year program customers and three-year program customers to return to cost-of-service rates without penalty, or else select another direct access option, after completing one year or three years, respectively, of direct access service.<sup>18</sup> In contrast, customers enrolled in the five-year program must provide four-years' notice to return to cost-of-service rates.<sup>19</sup> It is further undisputed that customers that wish to return to PacifiCorp's cost-based supply prior to completion of their three-year direct access term must pay Schedule 201's Returning Service Payment, which Schedule 201 states is intended to "compensate[] for the increased cost of serving such returning Consumer due to an increase in

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<sup>17</sup> See, e.g., Calpine Solutions/204 (Schedule 201, p. 1).

<sup>18</sup> Calpine Solutions/100, Higgins/9-10.

<sup>19</sup> Calpine Solutions/100, Higgins/10.

market price as compared to the market price used in determining the Consumer’s applicable transition credit as specified under Schedule 294.”<sup>20</sup>

The disputed issue here concerns the ability of a customer in the three-year program to switch to the five-year program before completing three full years in the three-year program. Calpine Solutions contends that, after the end of the first or second full year in the three-year program, a customer may reasonably begin service in the five-year program under the applicable going-forward terms of the five-year program, including starting payment of a full five years of applicable charges under the five-year program but without paying Schedule 201’s Returning Service Payment.<sup>21</sup> The three-year customer would do so by enrolling in the five-year program during the election window beginning on November 15, with a five-year term of payments applicable to the five-year program, include Schedule 296, commencing on the following January 1. In contrast, PacifiCorp contends that such a three-year program customer must also pay PacifiCorp’s Returning to Service Payment before enrolling in the five-year program—even though such customer *would not return to PacifiCorp’s service* before enrolling in the five-year program.<sup>22</sup>

The Commission should adopt Calpine Solutions’ position because PacifiCorp’s position is unreasonable and illogical. The Returning Service Payment is intended to recover the incremental costs (plus a 10% penalty) to accommodate customers that wish to *return to cost-of-service rates* prior to completing their minimum direct access term.<sup>23</sup> As noted above,

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<sup>20</sup> Calpine Solutions/100, Higgins/10 (quoting Schedule 201, p. 4).

<sup>21</sup> Calpine Solutions/100, Higgins/11-12.

<sup>22</sup> Calpine Solutions/100, Higgins/12; *see also* PAC/3000, Meredith/10-11.

<sup>23</sup> Calpine Solutions/100, Higgins/14.

PacifiCorp’s tariff itself states that the Returning Service Payment “compensates for the *increased cost of serving such returning Consumer* due to an increase in market price as compared to the market price used in determining the Consumer’s applicable transition credit as specified under Schedule 294.”<sup>24</sup> A three-year customer that switches to the five-year program is not returning to cost-of-service rates. Because the customer is not returning to PacifiCorp’s cost-of-service rates, there is no increased cost to serve the customer or any need to compensate PacifiCorp for such non-existent costs through the Returning Service Payment.<sup>25</sup>

Further, there is no sound reason to bar a customer enrolled in the three-year program from switching to commence service in the five-year program. The rate schedule for the three-year program, Schedule 295, only requires customers to commit to opt out of cost-based supply for a minimum of three years and in no way bars such a customer from moving to the five-year program during that three-year period.<sup>26</sup> A three-year customer that elects to extend its opt out of cost-based supply by enrolling in a longer term of direct access does not violate Schedule 295’s three-year “minimum” opt out of cost-based supply.<sup>27</sup> And, from an economic perspective, a three-year opt-out customer that switches to the five-year opt-out program would not gain an unfair advantage that could harm cost-of-service customers.<sup>28</sup> Indeed, a three-year customer that switches to the five-year program would ultimately be subject to a longer period of

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<sup>24</sup> Calpine Solutions/204 (PacifiCorp Schedule 201, p. 4) (emphasis added).

<sup>25</sup> Calpine Solutions/100, Higgins/14.

<sup>26</sup> Calpine Solutions/100, Higgins/13; *see also* Calpine Solutions/206 (Schedule 295, p. 1 (stating it is “Applicable” to “Large Nonresidential Consumers who have chosen to opt-out of the Company’s Cost-Based Supply Service Schedule 201 for a minimum three-year period . . . .”))).

<sup>27</sup> Calpine Solutions/100, Higgins/13.

<sup>28</sup> Calpine Solutions/100, Higgins/14-15.

transition adjustments than other five-year customers.<sup>29</sup> Such a customer would also pay Schedule 200 charges for PacifiCorp's fixed generation costs as long as six or seven years (depending on whether they switched from the three-year program after year one or year two) compared to five years of Schedule 200 payments for a cost-of-service customer enrolling in the five-year opt-out program.<sup>30</sup> There is similarly no advantage to paying one year of three-year program charges as opposed to one year of one-year program charges because the transition charges for those two programs are, in effect, the same over the course of the year.<sup>31</sup> PacifiCorp's witness refutes none of these points.<sup>32</sup> There is simply no harm to nonparticipating customers from this arrangement.

The most PacifiCorp can do is raise procedural objections. But PacifiCorp is incorrect to assert that a general rate case is the wrong forum to resolve this issue.<sup>33</sup> A general rate case is an appropriate forum to seek resolution of how a public utility's direct access tariffs should work. The Commission regularly resolves such issues in general rate cases.<sup>34</sup> Deferring the issue to a

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<sup>29</sup> Calpine Solutions/100, Higgins/14-15.

<sup>30</sup> Calpine Solutions/100, Higgins/14-15.

<sup>31</sup> Calpine Solutions/100, Higgins/15-16.

<sup>32</sup> PAC/3000, Meredith/11-12.

<sup>33</sup> PAC/3000, Meredith/

<sup>34</sup> *See, e.g., In the Matter of Portland General Electric Co., Request for a General Rate Revision*, Docket No. UE 335, Order No. 19-129, at 18-20 & Appendix B (April 12, 2019) (resolving numerous issues related to direct access tariffs, including right of certain customers whose demand that falls below Schedule 485's 201-kW threshold to remain on Schedule 485, and the right of certain direct access customers to change their location while remaining in program); *In the Matter of Portland General Electric Co., Request for a General Rate Revision*, Docket No. UE 262, Order No. 13-459, at 9-10 & Appendix B (Dec. 9, 2013) (changing the advance notification requirements for customers desiring to return to cost-of-service energy pricing, and expanding direct access offerings to include long-term direct access for streetlight and traffic signal customers)

rulemaking in AR 651 will just invite disputes to arise in the direct access election windows that will occur between now and resolution of the rulemaking. Indeed, although it now argues a rulemaking is the appropriate forum, PacifiCorp previously advised Calpine Solutions to file a complaint under ORS 756.500 to obtain resolution of this disagreement.<sup>35</sup> Instead of a protracted complaint process, Calpine Solutions submits this case is the most appropriate forum to resolve the issue.

PacifiCorp also faults Calpine Solutions for raising the issue for the first time in its rebuttal testimony.<sup>36</sup> But Calpine Solutions raised the issue at the soonest time available after PacifiCorp communicated its unreasonable position. Specifically, as the emails and discovery response contained in Calpine Solutions Exhibits 200-202 demonstrate, Calpine Solutions asked PacifiCorp in discovery in the parallel TAM proceeding (UE 400) to confirm it agreed that a three-year customer could switch to the five-year program, but PacifiCorp objected to responding in the TAM when response was due on June 7, 2022.<sup>37</sup> PacifiCorp did not provide its position until a month later on July 7, 2022.<sup>38</sup> By then, the due date for Calpine Solutions' opening testimony in this proceeding, June 22, 2022, had passed. Thus, Calpine Solutions included the issue in its next available opportunity, which was its rebuttal testimony due August 11, 2022. PacifiCorp can identify no prejudice here. The relatively simple question of how PacifiCorp's tariff should work does not require multiple rounds of testimony to resolve.

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<sup>35</sup> Calpine Solutions/202, Cross Exhibit/1-2.

<sup>36</sup> PAC/3000, Meredith/

<sup>37</sup> Calpine Solutions/200.

<sup>38</sup> Calpine Solutions/202, Cross Exhibit/2; *see also* Calpine Solutions/201 (containing communications demonstrating Calpine Solutions' attempt to obtain response to discovery after PacifiCorp's objection).

Additionally, PacifiCorp has been well aware of Calpine Solution's position for months now, and it had adequate time to respond through its own sur-rebuttal testimony.

In sum, PacifiCorp's proposal to apply the Returning Service Payment to a three-year customer choosing to extend its opt-out of cost-based supply by enrolling in the five-year program is an arbitrary and economically unjustified charge that the Commission should reject. PacifiCorp has identified no language in its tariff that bars a customer in the three-year program from switching to the five-year program as or that suggests the Returning Service Charge should apply. Thus, all that the Commission need do is to clarify the rights of three-year customers under the existing tariffs by rejecting PacifiCorp's arguments. However, if the Commission finds that language in PacifiCorp's tariff contradicts Calpine Solutions' proposal, the Commission should order PacifiCorp to make revisions to its tariff to allow the three-year customers to switch to the five-year program. A general rate case is an appropriate proceeding to make such changes, and any needed changes on the point are supported by the reasons explained above.

**B. Second and Third Partial Stipulations: The Commission Should Approve the Second and Third Partial Stipulations.**

Calpine Solutions is a signatory to, and recommends that the Commission approve, the Second Partial Stipulation filed by several parties on August 25, 2022, and the Third Partial Stipulation filed by several parties on September 21, 2022.

Among other provisions, the Second Partial Stipulation includes Calpine Solutions' recommendation that the TAM guidelines be modified to state that PacifiCorp's Schedule 296 sample calculation provided within 30 days of filing the TAM will be accompanied by all

supporting work papers, as recently agreed in a stipulation submitted by parties to the 2023 TAM case, UE 400. The Third Partial Stipulation includes an agreement among the parties to withdraw all remaining recommendations on changes to PacifiCorp's TAM and TAM Guidelines, including PacifiCorp's proposal for a rate-year update in the TAM, in lieu of agreement to hold workshops on such issues in the future.<sup>39</sup> These resolutions are supported by the Stipulating Parties' testimony in support of each stipulation,<sup>40</sup> as well as the testimony of Calpine Solutions' witness, Kevin C. Higgins. In his testimony, Mr. Higgins explained that the clarification on supply of Schedule 296 work papers resolves an issue that have arisen since the TAM Guidelines were last revised, and he identified certain direct-access-related problems that would arise with adoption of PacifiCorp's rate-year update proposal without further modifications.<sup>41</sup>

In sum, the Second and Third Partial Stipulations are a reasonable compromise of the issues addressed therein, and the Commission should approve those stipulations.

## V. CONCLUSION

For the reasons set forth above, the Commission should adopt Calpine Solutions' position that three-year direct access customers are free to enroll in the five-year program, as discussed above, and should approve the Second and Third Partial Stipulations.

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<sup>39</sup> Third Partial Stipulation, ¶ 20.

<sup>40</sup> Joint Testimony in Support of Second Partial Stipulation, Docket No. UE 399 (Sept. 23, 2022); Joint Testimony in Support of Third Partial Stipulation, Docket No. UE 399 (Sept. 21, 2022).

<sup>41</sup> Calpine Solutions/100, Higgins/8-9.

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