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October 13, 2022

VIA ELECTRONIC FILING

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

Re: Docket UE 399 – In the Matter of PACIFICORP, dba PACIFIC POWER, Request for a General Rate Revision

Attention Filing Center:

Attached for filing in the above-referenced docket is PacifiCorp's Opening Brief.

Please contact this office with any questions.

Sincerely,

Katherine McDowell

Attachment

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 399

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Request for a General Rate Revision.

PACIFICORP'S OPENING BRIEF

OCTOBER 13, 2022

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I. INTRODUCTION

PacifiCorp dba Pacific Power's (PacifiCorp or Company) Opening Brief addresses one of the two controverted issues remaining in this general rate case: Calpine Energy Solutions, LLC's (Calpine) recommendation that "a customer participating in the three-year opt-out program can switch to the five-year opt-out program under the going-forward terms of the five-year program, without being subject to the Returning Service Payment or other penalty, after the end of the first or second full year in the three-year program."[1] PacifiCorp objects to Calpine's proposal because it is unsupported in the record and contrary to Public Utility Commission of Oregon (Commission) rules, policy, and the Company's applicable tariffs.

In addition, this Opening Brief supports approval of the First, Second, and Third Partial Stipulations, which resolve most of the issues in this case. These partial stipulations are uncontested, supported by a robust record, and produce a fair and reasonable outcome as outlined in the joint testimony.

II. ARGUMENT

A. <u>The Commission Should Reject Calpine's "Free-Switching" Direct Access Proposal.</u>

1. Background

PacifiCorp currently offers three separate direct access programs, each with a different participation period and transition adjustment calculation. The basic program requires a commitment of one year and provides a transition adjustment calculated only for that period.[2] At the conclusion of the one-year period, the customer automatically returns to cost-of-service rates unless the customer elects to continue direct access service during the annual declaration window in November.[3] If the customer makes a new direct access election, the customer receives a new transition adjustment.

[1] Calpine Solutions/100, Higgins/4; 9–16. The other outstanding issue is PacifiCorp's proposed voluntary renewable energy tariff (VRET) in Schedule 273, Accelerated Commitment Tariff (ACT). The VRET is addressed in the Fourth Partial Stipulation, to which one party (NewSun) has objected, and is subject to a separate procedural schedule.
[2] Schedule 294, Transition Adjustment.
[3] *See* Schedule 201, Net Power Costs, Cost-Based Supply Service; *see also* OAR 860-038-0275 (establishing annual declaration window).

In OAR 860-038-0275(5), the Commission requires electric companies to offer a multi-year direct access program with an associated fixed transition adjustment. In accordance with this rule, PacifiCorp offers a three-year direct access program through Schedule 295.[4] This program requires a three-year commitment, and in return, the Company sets the transition adjustment in advance for that full period.[5] The three-year program provides customers with certainty around the transition adjustment for a multi-year period, but customers forgo the flexibility to switch service options annually.

In Order No. 12-500 in docket UM 1587, the Commission ordered PacifiCorp to develop an additional multi-year direct access offering—a five-year opt-out program, allowing customers to eventually transition to "permanent" direct access service without a transition adjustment.[6] In Order No. 15-060 the Commission approved PacifiCorp's five-year opt-out program.[7] Under this program, set forth in Schedule 296, customers pay both a transition adjustment and an opt-out charge for five years and then become permanent direct access customers.[8]

OAR 860-038-0240(6) requires the Company to design its cost-of-service rates and returning-customer charges to protect residential customers from costs incurred when direct access customers freely switch between direct access, standard offer and cost-of-service rates. Recognizing the potential for cost-shifting when direct access customers have the option to switch rates to take advantage of favorable market conditions, the rule specifically allows electric companies to "limit switching through enrollment periods or by requiring minimum terms of service."[9]

In compliance with these provisions, PacifiCorp's Rule 21 provides that a customer may

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[4] Schedule 295, Transition Adjustment, Three-Year Cost of Service Opt-Out.
[5] *Id.*
[6] *In re Public Utility Commission of Oregon; Investigation of Issues Relating to Direct Access*, Docket No. UM 1587, Order No. 12-500 at 9 (Dec. 30, 2012).
[7] *In re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket No. UE 267, Order No. 15-060 (Feb. 24, 2015).
[8] Schedule 296, Transition Adjustment Five-Year Cost of Service Opt-Out. *See generally, In re PacifiCorp, dba Pacific Power, 2022 Transition Adjustment Mechanism*, Docket No. UE 390, Order No. 21-379 at 40 (Nov. 1, 2021).
[9] OAR 860-038-0240(6).

return to cost-based service before termination of their direct access program only under the returning service provisions stated in Schedule 201.[10] If a customer is not eligible to return to cost-based rates, then the customer must instead seek standard offer service.

Customers who seek to leave their direct access programs in advance of their full commitments must make a returning-service payment as provided in Schedule 201.[11] This payment is equal to the difference in the forward market prices used to calculate the transition adjustment and the then-current forward prices plus a 10 percent penalty. Customers who have completed the five-year opt-out program (*i.e.*, "permanent" direct access customers) may return to PacifiCorp's cost-based rates only with four years' advanced notice.[12]

Given the different nature of the commitments made by one-, three- and five-year direct access customers, the Company is required to include the loads of one- and three-year direct access customers in its integrated resource planning, but not the loads of five-year opt-out customers.[13]

Calpine has extensively litigated the terms and conditions of PacifiCorp's five-year opt-out program since its inception.[14] Before this year, however, Calpine had never argued that a customer could avoid its full commitment to the three-year direct access program if it elected to join the five-year opt-out program.

Last year in Order No. 21-379 in docket UE 390 (the 2022 Transition Adjustment Mechanism (TAM)), the Commission concluded that, at least on an interim, non-precedential

[10] Schedule 201, Net Power Costs Cost-Based Supply Service.
[11] *Id.* at 4.
[12] Order No. 15-060 at 13 ("We adopt the requirement that a direct access customer must provide four years' advance notice in order to return to cost-of-service rates, finding this requirement to be reasonable.")
[13] *In re Public Utility Commission of Oregon; Investigation into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 19 (Jan. 8, 2007).
[14] *See, e.g., In re PacifiCorp, dba Pacific Power, 2019 Transition Adjustment Mechanism*, Docket No. UE 339, Order No. 18-421 at 9 (Oct. 26, 2018) (The Commission noted that "[f]or three consecutive TAM proceedings, we have considered arguments [from Calpine] about PacifiCorp's opt-out charge."); *In re PacifiCorp, dba Pacific Power, 2018 Transition Adjustment Mechanism*, Docket No. UE 323, Order No. 17-444 at 20 (Nov. 1, 2017) ("Calpine argues that the opt-out charge should decrease, rather than increase . . . ."); *In re PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Order No. 16-482 at 20-21 (Dec. 20, 2016) ("Noble Solutions [predecessor of Calpine Solutions] recommends that the opt-out charge in the five-year program be reduced to account for the impact of accumulated depreciation.").

basis, the opt-out charge in the five-year program could go negative and become an opt-out credit.[15] As long as this interim decision remains in place, Calpine's proposal in this case would allow a customer to freely switch from the three-year to the five-year program in the event market conditions produce an opt-out credit.

In Order No. 21-379, the Commission clarified that its decision to allow an opt-out credit would remain in effect only until the Commission fully addressed the issue in docket UM 2024.[16] The Commission is currently conducting a comprehensive investigation and rulemaking on direct access issues in docket UM 2024 and in a companion rulemaking, docket AR 651.

2. Given the Importance of the Policy Issues Calpine Raises, the Commission Should Deny its Proposal on this Record, Especially Since Calpine Is Free to Raise its Proposal in the Pending Direct Access Dockets or in a Separate Complaint Proceeding.

Calpine's proposal allowing election into the five-year direct access program before the end of a customer's commitment to the three-year direct access program raises important policy issues. Without enforceable enrollment periods and returning-customer charges, the risk of cost-shifting to cost-of-service customers increases significantly, especially now that an opt-out charge may convert to a credit in certain years. Indeed, OAR 860-038-0240(6) specifically authorizes defined enrollment periods and makes clear that they are designed to prevent the cost-shifting that occurs when customers can freely switch among different supply options.

Calpine waited until its rebuttal testimony at the very end of this case to raise this issue, leaving PacifiCorp only two weeks to develop surrebuttal testimony to respond to it and denying the opportunity for Staff and intervenors to respond in testimony.[17] Calpine failed to address a number of important points, including why customers should be able to avoid their obligation to stay in the three-year program and freely move to the five-year program given the fundamental differences between the programs (for example, that PacifiCorp continues to conduct resource

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[15] Order No. 21-379 at 42.
[16] *Id.*
[17] *See*, Docket No. UE 399, Procedural Conference Memorandum (Apr. 4, 2022).

planning for three-year customers, but not five-year customers) and whether Portland General Electric Company (PGE) allows free switching among direct access service options. Nor has Calpine explained the urgency for a ruling on this issue now, when the underlying question has been present since the inception of the Company's five-year opt-out program in 2015. On the meager record now before it, the Commission should deny Calpine's proposal to nullify the three-year enrollment period when a customer wishes to elect the five-year opt-out program.

Calpine is free to raise its proposal in the Commission's generic direct access dockets, where the Commission is now reviewing related policy issues. The Commission has already referred similar direct access issues from recent rate cases and other contested case proceedings to those dockets.[18] Resolution of Calpine's issue in the pending direct access dockets would ensure consistency with other policy determinations and allow the parties to fully develop the record on this issue. Alternatively, Calpine may bring a complaint proceeding and ask the Commission to resolve the issue on an expedited, stand-alone basis. Either way, the Commission would be assured of a more robust record on which to base its decision.

3. Calpine's Proposal is Contrary to Commission Rules that Allow Minimum Enrollment Periods and Returning Customer Charges to Prevent Cost-Shifting to Other Customers.

The transition adjustments calculated under the three- and five-year direct access programs can change significantly from year-to-year and, at least for now, the opt-out charge may be a credit paid to direct access customers.[19] When a customer opts into the three-year program, it agrees to participate in the program for three years and accept the stream of transition adjustments presented in the particular election window when they enroll. If customers can switch programs without restrictions, it allows them to game the direct access election, cherry-

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[18] *See, e.g.*, *In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-473 at 19 (Dec. 18, 2020) (referring proposal for a non-bypassable charge for decommissioning costs to docket UM 2024); *In re Portland General Electric Company, Advice No. 19-02 (ADV 919) New Load Direct Access Program,* Docket No. UE 358, Order No. 20-002 at 8 (Jan. 7, 2020) (concluding that docket UM 2024 is the most appropriate place to explore key questions presented by PGE's proposal for a resource adequacy charge in its new load direct access tariff).

[19] PAC/3000, Meredith/11.

picking the most advantageous transition adjustments or consumer opt-out charges. This opportunity for direct access customers creates an asymmetric risk to cost-of-service customers and is contrary to OAR 860-038-0240(6). If a customer enrolls in the three-year direct access program and agrees to be subject to the transition adjustments presented, it should remain for the entire three years or face the potential penalty Schedule 201 specifies.[20]

Calpine claims that the language of Schedule 295, the three-year direct access tariff, supports Calpine's position by specifying that the tariff is applicable to customers "who have chosen to opt-out of the Company's Cost-Based Supply Service Schedule 201 for a minimum three-year period."[21] Calpine claims that a customer can move to the five-year direct access program and meet this requirement because it is not returning to cost-based rates.

Calpine's interpretation of the tariff language is unreasonable. The tariff echoes the language of OAR 860-038-0240(6), which authorizes the use of "minimum" terms of service. The tariff simply indicates that a customer must remain on Schedule 295 for at least three years but is free to renew its election to the program for additional three-year terms. As the Commission noted in Order No. 21-379, "[c]ustomers that choose the one and three year opt-out program must renew at the end of the term," in contrast to those in the five-year program who "permanently leave PacifiCorp's system."[22]

To the extent that the Commission determines there is any ambiguity in the language of Schedule 295, PacifiCorp requests the opportunity to refile the tariff and clarify that customers who elect the three-year direct access program commit to remain in that program for the full three-year period, consistent with OAR 860-038-0240(6).

B. The Commission Should Approve the First, Second, and Third Partial Stipulations.

PacifiCorp requests that the Commission approve the three partial stipulations which, in a balanced and reasonable manner, resolve most of the issues in this case.

[20] PAC/3000, Meredith/12.
[21] Schedule 295, Transition Adjustment, Three-Year Cost of Service Opt-Out at 1.
[22] Order No. 21-379 at 40.

1. Background

The first partial stipulation was entered on August 25, 2022, among PacifiCorp, Staff of the Public Utility Commission of Oregon (Staff), and the Oregon Citizens' Utility Board (CUB). The parties filed joint testimony on September 23, 2022, in support of the first partial stipulation. The first partial stipulation resolved all issues related to wildfire mitigation and vegetation management, including approval of an increase in wildfire mitigation and vegetation management expenses included in the Company's base rates from $30 million to $69.7 million; requiring PacifiCorp to track its actual wildfire mitigation and vegetation management spending in base rates and defer any unspent amounts for future Commission disposition; and allowing PacifiCorp to recover incremental vegetation management costs through a revised Wildfire Mitigation and Vegetation Management Mechanism.[23]

The second partial stipulation was entered on August 25, 2022, among PacifiCorp, Staff, CUB, the Alliance of Western Energy Consumers (AWEC), Calpine, Walmart Inc. (Walmart), Vitesse, LLC (Vitesse), and the Klamath Water Users Association and Oregon Farm Bureau Federation (KWUA/OFBF). The parties filed joint testimony on September 23, 2022, in support of the second partial stipulation. The second partial stipulation settled various revenue requirement issues, including the removal of costs associated with certain capital projects and fuel stock inventory, and an adjustment to the depreciable lives of Jim Bridger Units 1 and 2.[24]

The third partial stipulation was entered on September 21, 2022, among PacifiCorp, Staff, CUB, AWEC, Fred Meyer and Quality Food Centers (Fred Meyer), Walmart, Small Business Utility Advocates (SBUA), and KWUA/OFBF. The parties filed joint testimony on September 21, 2022, in support of the third partial stipulation. The third partial stipulation resulted in a $6.0 million reduction to the Company's proposed revenue requirement.[25] This adjustment fully

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[23] Joint Testimony in Support of First Partial Stipulation, Stipulating Parties/200, Steward, Storm, Jenks/4.

[24] Joint Testimony in Support of Second Partial Stipulation, Stipulating Parties/300, Steward, Muldoon, Jenks, Mullins, Higgins, Kronauer, Cebulko, Reed/4.

[25] Joint Testimony in Support of Third Partial Stipulation, Stipulating Parties/100, Steward, Muldoon, Jenks, Mullins, Bieber, Kronauer, Steele, Kermode, Reed, Cebulko, Higgins/5-6.

resolved all contested revenue requirement items not addressed in an issue-specific settlement. Additionally, the parties agreed to the amortization of certain deferrals through separate schedules,[26] and PacifiCorp agreed to a one-year general rate case stay-out for calendar year 2023, meaning it will not file a general rate case with rates effective earlier than January 1, 2025.[27]

2. The Commission Should Approve the Three Partial Stipulations Because They Are Supported by the Record, Represent a Reasonable Compromise Among the Parties, and Result in Fair and Reasonable Rates.

The Commission generally approves uncontested stipulations that are supported by "sufficient evidence in the record, that [] appropriately resolve the identified issues, and [] will result in just and reasonable rates."[28] The Commission has found that the record in support of a stipulation is satisfactory where, as here, the parties "conducted a thorough investigation of the company's testimony and exhibits, served numerous data requests, participated in settlement conferences, and filed insightful testimony."[29]

The three partial stipulations meet the Commission's standard for approval. As outlined in the joint testimony, the partial stipulations will produce just and reasonable rates as required by ORS 756.040. The parties to each partial stipulation participated in multiple settlement conferences and resolved their differences incrementally through dialogue and negotiations, resulting in reasonable compromises. The partial stipulations avoid the significant resources required to fully litigate this case and provide rate stability with the 2023 rate case stay-out period. The partial stipulations are uncontested, which demonstrates their fair and balanced nature.

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[26] Stipulating Parties/100, Steward, Muldoon, Jenks, Mullins, Bieber, Kronauer, Steele, Kermode, Reed, Cebulko, Higgins/5.
[27] Stipulating Parties/100, Steward, Muldoon, Jenks, Mullins, Bieber, Kronauer, Steele, Kermode, Reed, Cebulko, Higgins/18.
[28] *In re Portland General Electric Company, Request for a General Rate Revision,* Docket No. UE 335, Order No. 19-129 at 11 (Apr. 12, 2019).
[29] *Id.*

III. CONCLUSION

Calpine has not developed a record sufficient to support its position that customers in the Company's three-year direct access program may freely switch to the five-year opt-out program before the end of their three-year commitment. Nor has Calpine demonstrated why the Commission must make this determination now in advance of the important policy decisions on direct access now pending in dockets AR 651 and UM 2024. Calpine's proposal to void the three-year enrollment requirement in Schedule 295 if a customer wishes to move to the five-year opt-out is contrary to OAR 860-038-0240(6) and raises the risk of cost-shifting to other cost-of-service customers. For these reasons, the Commission should deny Calpine's proposal.

The Commission should approve the three partial stipulations for the reasons set forth in the joint testimony. The record supporting the three partial stipulations is robust and meets the Commission's standard for approval of uncontested stipulations.

Dated this 13th day of October 2022.

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