BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

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

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I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its reply brief to the Public Utility Commission of Oregon ("OPUC" or "Commission") in this matter.

Calpine Solutions continues to recommend that the Commission clarify that a direct access customer enrolled in PacifiCorp's three-year opt-out program can enroll in 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. As Calpine Solutions explained in its opening brief, and as Staff and the Alliance of Western Energy Consumers agree, PacifiCorp's position is illogical and contradicts the plain words of PacifiCorp's own applicable tariff, Schedule 201—which applies the Returning Service Charge only when there is an "increased cost of serving" a customer "returning" to PacifiCorp's cost-of-service rates.[1]

As discussed further below, PacifiCorp's arguments are without merit. *First*, PacifiCorp points to OAR 860-038-0240(6) as authority to bar a three-year customer from enrolling in the five-year program. But OAR 860-038-0240(6) is intended to prevent cost shifts caused by a direct access customer "returning to a cost-of-service rate" and states a utility may limit such switching back to cost-of-service rates through a "minimum term of service."[2] Because a three-year customer enrolling in the five-year program is not returning to cost-of-service rates, OAR 860-038-0240(6) is inapplicable. *Second*, PacifiCorp asserts that three-year customers should

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1 Calpine Solutions/204, Cross Exhibit/4 (Schedule 201, p. 4).

2 OAR 860-038-0240(6).

not be allowed to enroll in the five-year program because the five-year program's rates may, in PacifiCorp's view, be too favorable to the direct access customer. That argument fails because the three-year customer enrolling in the five-year program would pay the same five-year term of charges as a cost-of-service customer entering the five-year program—rates that this Commission has found to be just and reasonable under Oregon law. *Third*, PacifiCorp's remaining procedural arguments are without merit. Therefore, the Commission should provide the clarification requested by Calpine Solutions with respect to the three-year program issue.

II. ARGUMENT

A. <u>Three-Year Program Issue</u>: 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. As explained previously, PacifiCorp's contention that such customer must pay the Returning Service Payment before enrolling in the five-year program is incorrect and unreasonable because such customer *would not return to PacifiCorp's service* before enrolling in the five-year program.[3] 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

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[3] Calpine Solutions/100, Higgins/12; *see also* PAC/3000, Meredith/10-11.

294."[4] 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.[5] In the following sections, this reply brief responds to the three primary arguments PacifiCorp makes in its opening brief.

1. PacifiCorp's reliance on OAR 860-038-0240(6) is misplaced.

PacifiCorp points to OAR 860-038-0240(6) as authority to bar a three-year customer from enrolling in the five-year program. According to PacifiCorp, "the rule specifically allows electric companies to 'limit switching through enrollment periods or by requiring minimum terms of service[,]'" which PacifiCorp believes it has done with its tariffs to restrict movement from the three-year program to the five-year program.[6] But OAR 860-038-0240(6) and PacifiCorp's tariffs do not support PacifiCorp's position.

The rule states in full as follows:

> (6) The electric company must design its cost-of-service rate for nonresidential consumers and one-time charges associated with returning to a cost-of-service rate so that residential consumers served under a cost-of-service rate are not assigned costs associated with other classes of consumers switching between direct access or standard offer and the cost-of-service rate. The electric company may limit switching through enrollment periods or by requiring minimum terms of service.[7]

As it states, the rule is intended to prevent cost shifts caused by a direct access customer "returning to a cost-of-service rate[,]" and the rule provides that a utility may limit such

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4 Calpine Solutions/204 (PacifiCorp Schedule 201, p. 4) (emphasis added).
5 Calpine Solutions/100, Higgins/14.
6 PacifiCorp's Op. Br.at 2 (quoting OAR 860-038-0240(6)).
7 OAR 860-038-0240(6).

switching back to cost-of-service rates through a "minimum term of service."[8] In context, the rule clearly intends to allow requiring customers to commit to a minimum term of direct access service before returning to cost-of-service rates, or else such customers must pay applicable "one-time charges" to return to cost-of-service rates.[9]

Applied here, a three-year customer enrolling in the five-year program is not returning to cost-of-service rates, and thus OAR 860-038-0240(6) is inapplicable. Further, as argued previously, nothing in PacifiCorp's tariffs bars switching from the three-year program to the five-year program.

PacifiCorp's reliance on Schedule 295 is misplaced.[10] That rate schedule for the three-year program only requires customers to commit to opt out of cost-of-service rates 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.[11] A three-year customer that elects to extend its opt out of cost-of-service rates by enrolling in a longer term of direct access does not violate Schedule 295's three-year "minimum" opt out of cost-of-service rates.[12] PacifiCorp's brief reads words into the tariff that are simply not there.

Similarly, PacifiCorp has incorrectly suggested that Schedule 296 only allows customers

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8 OAR 860-038-0240(6).

9 OAR 860-038-0240(6).

10 *See* PacifiCorp's Op. Br. at 6 (arguing the "minimum" term of service in Schedule 295 "echoes the language of OAR 860-038-0240(6)").

11 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 . . . .")).

12 Calpine Solutions/100, Higgins/13.

to enroll in the five-year program from cost-of-service rates.[13] Therefore, according to PacifiCorp, the three-year customer must first return to cost-of-service rates, at least briefly, prior to enrolling in the five-year program, and such brief return to cost-of-service rates triggers the penalty of the Returning Service Payment. But Schedule 296 contains no restriction against a three-year customer enrolling in the five-year program without first briefly returning to cost-of-service rates. Schedule 296 states it is applicable to "Large Nonresidential Consumers" who take delivery service on schedules applicable to customers who meet the size thresholds of the five-year program.[14] A customer currently enrolled in the three-year program could meet all of the criteria listed in Schedule 296 without first returning to cost-of-service rates. But even if PacifiCorp were correct that some provision of its tariff requires customers to be enrolled in cost-of-service rates to enroll in the five-year program, there is still no justification for applying the Returning Service Payment. As Staff explains, "if a three-year opt-out customer must briefly return to cost-of-service rates to be eligible to opt into the five-year program, that is not the circumstance for which the Returning Service Payment was intended."[15]

In sum, while OAR 860-038-0240(6) and PacifiCorp's applicable tariffs would certainly

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[13] *See* Staff's Op. Br. at 4 (noting this argument in PAC/3000, Meredith/11).

[14] Schedule 296 states in pertinent part:

> "Applicable: To Large Nonresidential Consumers who have chosen to opt-out of the Company's Cost-Based Supply Service Schedule 201 for a five-year period and who currently receive Delivery Service under Schedules 47, 48, 747, or 748 or Consumers who receive service under Delivery Service Schedules 30, 47 and/or 48 or 730, 747 and/or 748 under a single corporate entity with meters of more than 200 kW of billing demand at least once in the previous thirteen months that total to at least 2 MW."

Calpine Solutions/207, Cross Exhibit/1.

[15] Staff's Op. Br. at 3.

require a three-year customer to pay the Returning Service Payment if it wished to end its opt-out early and return to cost-of-service rates, there is no basis in the rule or the tariffs to bar a three-year customer from extending its opt-out by enrolling in the five-year program.

2. Allowing three-year customers to enroll in a new five-year term of rates applicable to the five-year program will not result in a cost shift.

PacifiCorp also asserts that three-year customers should not be allowed to enroll in the five-year program because the five-year program's rates may, in PacifiCorp's view, be too favorable to the direct access customer.[16] But these arguments are unpersuasive.

Despite PacifiCorp's arguments, there is no harm to nonparticipating customers from allowing a three-year customer to permanently extend its opt-out of cost-of-service rates by enrolling in the five-year program. As Calpine Solutions previously explained, a three-year customer that switches to the five-year program would ultimately be subject to a longer period of transition adjustments than other five-year customers.[17] 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.[18] 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.[19]

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[16] PacifiCorp's Op. Br. at 5-6.
[17] Calpine Solutions/100, Higgins/14-15.
[18] Calpine Solutions/100, Higgins/14-15.
[19] Calpine Solutions/100, Higgins/15-16.

Although PacifiCorp complains that there is risk to cost-of-service customers with allowing enrollment in one direct access vintage of rates versus another,[20] that is the same risk that exists whenever cost-of-service customers enroll in a direct access program. The transition adjustment rates can change from one shopping window to the next because the elements that make them up—including PacifiCorp's cost-of-service rates and the market conditions—change over time. The one constant, however, is that the rates are always approved by this Commission as just and reasonable.

PacifiCorp also notes that it 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 direct access customers,[21] as if this distinction is relevant to the issue at hand. It is not. There is no disagreement that a three-year customer can enter the five-year program after completing its three-year term—integrated resource planning notwithstanding. Similarly, cost-of-service customers can enter the five-year program, even though PacifiCorp has been planning for their loads. To hold other customers harmless from its decision to shop, the customer entering the five-year program must accept responsibility for five years' worth of transition charges (including Schedule 200 payments) plus a consumer opt-out charge. And the same set of Commission-approved charges, expressly designed to hold other customers harmless, would apply to a three-year customer that enters the five-year program prior to the end of its three-year term.

PacifiCorp's real complaint appears to be that, in PacifiCorp's view, the Commission

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[20] PacifiCorp's Op. Br. at 6.
[21] PacifiCorp's Op. Br. at 3.

should have adopted PacifiCorp's proposal in last year's transition adjustment mechanism ("TAM") proceeding to arbitrarily prevent the five-year program's consumer opt-out charge from being a credit. PacifiCorp attempts to justify its arbitrary restriction on entering the five-year program by asserting that "the risk of cost-shifting to cost-of-service customers increases . . . now that an opt-out charge may be converted to a credit."[22] But PacifiCorp's collateral attack on the Commission's order in last year's TAM is misplaced. The consumer opt-out charge is one of the elements that make up the overall charges to a customer in the five-year program.[23] The Commission properly found that the consumer opt-out charge may be a credit where calculation under the methodology that has been used since inception of the five-year program results in a negative value for that charge.[24] PacifiCorp did not challenge that determination through reconsideration or appeal. Nor was there any basis do so. Oregon law and regulation specifically require that direct access customers "*will receive a transition credit or pay a transition charge*" resulting from the ongoing valuation calculation used to calculate the transition adjustments, which is the same method used to calculate the consumer opt-out

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22 PacifiCorp's Op. Br. at 4.

23 *In re Pacific Power dba PacifiCorp, 2022 Transition Adjustment Mechanism*, Docket No. UE 390, Order No. 21-379, 40 (Nov. 1, 2021) (explaining five-year program customers pay "actual Schedule 200 fixed costs, . . a transition adjustment that is the net cost or credit for Schedule 201 power costs offset by the value of the freed-up energy[,]" and the consumer opt-out charge, which is "a forecast of the Schedule 200 fixed costs for years six through ten, brought forward into years one through five, offset by the transition adjustments projected for years six through ten that net projected power costs against the value of the freed-up energy.").

24 *In re Pacific Power dba PacifiCorp, 2022 Transition Adjustment Mechanism*, Order No. 21-379 at 39-42.

charge.[25] PacifiCorp's opposition to a negative consumer opt-out charge was meritless in UE 390, and its argument to arbitrarily limit customers' right to enroll in the five-year program is likewise meritless here.

In sum, PacifiCorp's argument ultimately fails because the three-year customer enrolling in the five-year program would pay the same five-year term of charges as a cost-of-service customer entering the five-year program—rates that this Commission has found to be just and reasonable under Oregon law.

3. PacifiCorp's procedural objections are meritless.

PacifiCorp again raises procedural objections, but none of these procedural objections have any merit. As Staff agrees, "a general rate case is an appropriate forum in which to raise a concern with application of a penalty under Schedule 201."[26] Staff also correctly points out that PacifiCorp's proposal to defer the issue until AR 651 is unworkable because this issue is not included with the scope of the Commission's notice of proposed rulemaking in AR 651.[27]

PacifiCorp's argument that there was insufficient process to litigate the issue in this proceeding is disingenuous. After PacifiCorp had been well aware of Calpine Solutions' position for months, PacifiCorp was provided the opportunity to submit pre-filed testimony on the subject, and, if it believed pre-filed testimony was insufficient, PacifiCorp (and any other interested parties) had the opportunity to present additional evidence through cross examination

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[25] OAR 860-038-0160(1) (emphasis added); *see also In re Pacific Power dba PacifiCorp, 2022 Transition Adjustment Mechanism*, Order No. 21-379 at 39-42 (describing calculation of the consumer opt-out charge under the ongoing valuation method).

[26] Staff's Op. Br. at 4.

[27] Staff's Op. Br. at 3.

of Calpine Solutions' witness at an evidentiary hearing and further could have requested oral argument. Having waived the hearing and oral argument, PacifiCorp cannot now argue the process here was insufficient. Calpine Solutions raised the issue at the soonest time available after PacifiCorp communicated its unreasonable position,[28] and PacifiCorp had adequate opportunity to present its case.

PacifiCorp's arguments are also contradictory. On the one hand, PacifiCorp asserts that this issue should be addressed on a wholistic basis with all other direct access issues in a rulemaking or generic proceeding "to ensure consistency."[29] Yet, on the other hand, PacifiCorp argues Calpine Solutions should "bring a complaint proceeding" to have the Commission address the issue "on an expedited, stand-alone basis."[30] Despite PacifiCorp's confusing arguments, the issue has been fully vetted here, and the Commission should resolve it.

III. CONCLUSION

In sum, PacifiCorp's proposal to apply the Returning Service Payment to a three-year customer choosing to extend its opt-out of cost-of-service rates by enrolling in the five-year program is an arbitrary and economically unjustified charge that the Commission should reject. Thus, the Commission should clarify the rights of three-year customers under the existing tariffs by rejecting PacifiCorp's arguments. Alternatively, 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 enroll in the five-

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[28] *See* Calpine Solutions' Op. Br. at 9-10 (so arguing).
[29] PacifiCorp's Op. Br. at 5.
[30] PacifiCorp's Op. Br. at 5.

year program.

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