Calpine Solutions Exhibit 100
Witness: Kevin C. Higgins

BEFORE THE PUBLIC UTILITY COMMISSION OF THE STATE OF OREGON

In the Matter of	)	
PacifiCorp, dba Pacific Power,	)	Docket No. UE 399
Request for a General Rate	)	
Revision	)	

Rebuttal Testimony of Kevin C. Higgins

on behalf of

Calpine Energy Solutions, LLC

August 11, 2022

REBUTTAL TESTIMONY OF KEVIN C. HIGGINS

Introduction

Q. Please state your name and business address.

A. My name is Kevin C. Higgins. My business address is 111 East Broadway, Suite 1200, Salt Lake City, Utah, 84111.

Q. By whom are you employed and in what capacity?

A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies is a private consulting firm specializing in economic and policy analysis applicable to energy production, transportation, and consumption.

Q. On whose behalf are you testifying in this proceeding?

A. My testimony is being sponsored by Calpine Energy Solutions, LLC ("Calpine Solutions"). Calpine Solutions is a retail energy supplier that serves commercial and industrial end-use customers in 18 states, the District of Columbia, and Baja California, Mexico. Calpine Solutions serves more than 15,000 retail customer sites nationwide, with an aggregate load in excess of 4,500 MW. Calpine Solutions' retail customers are located in the service territories of more than 55 utilities. In Oregon, Calpine Solutions is an Electricity Service Supplier ("ESS") serving customers in the service territories of PacifiCorp and Portland General Electric ("PGE").

Q. Please describe your professional experience and qualifications.

A. My academic background is in economics, and I have completed all coursework and field examinations toward a Ph.D. in Economics at the University of Utah. In addition, I have served on the adjunct faculties of both the University of Utah and Westminster College, where I taught undergraduate and graduate courses in economics. I joined Energy Strategies in 1995, where I assist private and public sector clients in the areas of energy-related economic and policy analysis, including evaluation of electric and gas utility rate matters.

Prior to joining Energy Strategies, I held policy positions in state and local government. From 1983 to 1990, I was economist, then assistant director, for the Utah Energy Office, where I helped develop and implement state energy policy. From 1991 to 1994, I was chief of staff to the chairman of the Salt Lake County Commission, where I was responsible for development and implementation of a broad spectrum of public policy at the local government level.

Q. Have you ever testified before this Commission?

A. Yes. I have testified in 34 prior proceedings in Oregon, including thirteen PacifiCorp Transition Adjustment Mechanism ("TAM") proceedings, UE 400 (2023 TAM), UE 390 (2022 TAM), UE 375 (2021 TAM), UE 339 (2019 TAM), UE 323 (2018 TAM), UE 307 (2017 TAM), UE 296 (2016 TAM), UE 264 (2014 TAM), UE 245 (2013 TAM), UE 227 (2012 TAM), UE 216 (2011 TAM), UE 207 (2010 TAM), and UE 199 (2009 TAM). I have also participated in seven PacifiCorp general rate cases, UE 374 (2020); UE 263 (2013), UE 246 (2012), UE 210 (2009), UE 179 (2006), UE 170 (2005), and UE 147 (2003), as well as the PacifiCorp Five-Year Opt-Out case, UE 267 (2013).

In addition, I have testified in seven previous PGE general rate cases, UE 394 (2021), UE 335 (2018), UE 283 (2014), UE 262 (2013), UE 215 (2010), UE

197 (2008), and UE 180 (2006). In addition, I testified in the PGE New Load Direct Access Case, UE 358 (2019); the PGE Opt-Out case, UE 236 (2012); and the PGE restructuring proceeding, UE 115 (2001).

I also testified in the Investigation into PacifiCorp's Non-Standard Avoided Cost Pricing, UM 1802 (2017); the 2017 Inter-Jurisdictional Allocation proceeding, UM 1050 (2016); and Phase II of the Investigation into Qualifying Facility Contracting and Pricing, UM 1610 (2015).

Q. Have you testified before utility regulatory commissions in other states?

A. Yes. I have testified in approximately 240 proceedings on the subjects of utility rates and regulatory policy before state utility regulators in Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. I have also prepared affidavits that have been filed with the Federal Energy Regulatory Commission.

<u>Overview and Conclusions</u>

Q. What is the purpose of your rebuttal testimony?

A. My testimony responds to the discussion among the parties regarding the structure of the Transition Adjustment Mechanism ("TAM") and the TAM guidelines. I also request that the Commission clarify the terms under which a direct access customer participating in the three-year opt-out program can switch to the five-year opt-out program prior to the end of the customer's three-year opt-out term.

Q. Please summarize your recommendations.

A. I offer the following recommendations:

1) I agree with the Alliance of Western Energy Consumers ("AWEC") and Citizen's Utility Board ("CUB") that PacifiCorp's proposal to add a "rate year update" to the TAM should be rejected by the Commission, as it adds an unnecessary layer of rate changes for customers. However, in the event that the Commission accepts the Company's rate year update proposal, then I agree with AWEC that it would be appropriate to add a second direct access shopping window to align with the updated rates. If the Commission does not approve of a second shopping window, then I recommend that the current shopping window be moved from November to March to better match the period used for setting rates for Cost-Based service in the TAM year.

2) I recommend that the TAM guidelines be modified to state that PacifiCorp's provision of the Schedule 296 calculations used to calculate the Consumer Opt-Out Charge 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.

3) I recommend that the Commission make clear in its order in this case 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.

TAM Structure and Guidelines

Q. What aspect of TAM structure are you addressing?

A. I am addressing the rate year update that PacifiCorp has proposed for the TAM. The Company is proposing to modify the TAM by adding an update that would reset Schedule 201 during the rate year to reflect the latest official forward price curve, the latest short-term purchases and sales, and the most recent hydrologic forecast for the test year. The rate year update filing would occur on March 1 of the rate year, with a rate effective date of April 1.[1]

PacifiCorp's proposal is opposed by AWEC and CUB. AWEC points out that the proposal would result in another rate change within a year and unreasonably shifts risk associated with the net power cost forecast from PacifiCorp to ratepayers, increasing rate variability and resulting in increased uncertainty for customers.[2] CUB argues that the proposal would increase rate volatility for customers and add an additional burden on the regulatory process.[3]

Q. Do you agree with these concerns expressed by AWEC and CUB?

A. Yes. Moreover, from the standpoint of customers seeking direct access service, PacifiCorp's proposal creates a mismatch between the transition adjustment calculated for customers entering direct access service in the rate year and the Schedule 201 rates that would actually be in effect for most of that year. AWEC recognizes this problem and proposes that if the Company's proposal is adopted,

[1] PAC/400, Wilding/4-5.
[2] AWEC/100, Mullins/28.
[3] CUB/200, Gehrke/2.

then a second shopping window should be made available to correspond to the updated TAM rates.[4] I agree.

Q. How has PacifiCorp responded to AWEC's proposal for a second shopping window?

A. PacifiCorp does not support AWEC's proposal for a second shopping window. The Company responds that while AWEC is correct that one purpose of the TAM is to calculate transition adjustments, the "other purpose" is to calculate net power costs for cost-of-service customers. PacifiCorp contends that the goal of its rate-year update is to capture costs that are uniquely applicable to cost-of-service customers and not direct access customers, so the fact that there is a mismatch in these costs is appropriate.[5]

Q. What is your response to the Company's reply to AWEC on this point?

A. I have been participating in TAM proceedings since 2008, which was PacifiCorp's fourth TAM. AWEC's characterization that the fundamental purpose of the TAM is to set the transition adjustment for direct access service is correct. That is why it is called the TAM. As the Commission stated in its its initial order authorizing the TAM structure that is in place today:

> The purpose of the TAM is not to promote direct access, as ICNU would have us do. Rather, the TAM is to capture costs associated with direct access, and prevent unwarranted cost shifting.[6]

[4] AWEC/100, Mullins/29.
[5] PAC/1500, Mullins/20-21.
[6] UE 170, Order No. 05-1050 at 21.

When the Commission initially determined that net power costs for cost-of-service customers were to be adjusted as part of the TAM, it was not done for its own sake, but rather to ensure that there was no mismatch between cost-of-service rates and the transition adjustment that was calculated relative to those rates. At least that was the original idea. As described by the Commission that initial order:

> PacifiCorp's proposed TAM relies on its power cost model, GRID. PacifiCorp proposes to make two GRID runs for each rate schedule, one with full Oregon load and one with a 25 MW load reduction shaped according to the rate schedule. These runs will be used to calculate the weighted market value of the energy used to serve direct access customers. The TAM then calculates the adjustment by comparing the weighted market value to the cost of service rate under the customers' specific, energy-only tariff. *Included in the process is an annual power cost update to ensure that both the weighted market value and the cost of service are calculated for the same period using the same data*.[7]

I do not dispute that since its inception the TAM has been transformed into a ratemaking exercise that is concerned primarily with net power costs recovered from cost-of-service customers. But that is not the reason it was created in the first place. Ironically, after PacifiCorp successfully argued in UE 170 that updates to net power cost were necessary to accurately measure the transition adjustment, the Company now argues that the TAM's "other purpose" can proceed independently of the transition adjustment and be adjusted without regard to direct access. I encourage the Commission not to proceed further down this slippery slope.

[7] *Id* at 20 (emphasis added).

Q. If the Commission allows PacifiCorp to implement a rate year update in the TAM, but does not require a second shopping window as proposed by AWEC, is there another alternative that should be considered?

A. Yes. While I believe the preferred alternative is simply to reject PacifiCorp's proposal, and the next best alternative is to accept AWEC's proposal for a second shopping window, a third alternative would be to move the shopping window and final calculation of the transition adjustment from November to March. That would at least align the transition adjustment with the final cost-of-service rates for the majority of the rate year.

Q. Turning to the TAM guidelines, Staff has proposed that PacifiCorp provide "Workpapers and all supporting documents underlying each of the Company's models or adjustments, either existing or newly proposed" as soon as possible after the initial filing.[8] Do you have any additional comments regarding the TAM guidelines?

A. Yes. Staff explains that the current requirement of submitting data requests to obtain such materials is inefficient to the processing and prompt resolution of the TAM.[9] PacifiCorp's reply testimony states it needs additional clarification of Staff's specific proposal for additional work papers supporting the initial filing.[10] While Calpine Solutions takes no position on the work papers supporting the initial filing proposed for inclusion in the guidelines by Staff, a similar problem

[8] *See* Staff/900, Enright/14-16.
[9] Staff/900, Enright/15-16.
[10] PAC/1500, Wilding/6.

has recently been addressed concerning PacifiCorp's provision of the Schedule 296 sample calculation as part of its TAM filing.

The current TAM guidelines require PacifiCorp to provide a sample calculation of Schedule 296 rates within 30 days of filing the TAM. In the 2023 TAM docket, UE 400, parties submitted a stipulation clarifying that the sample calculations would be accompanied by all supporting workpapers. I recommend that the Commission approve this clarification in this proceeding as well to ensure the final TAM guidelines reflect the parties' agreement from the UE 400 proceeding. This change is necessary because in the 2023 TAM, the Company's filing of the Schedule 296 sample calculation was not accompanied by supporting work papers. Instead, the work papers had to be obtained through discovery, adding unnecessary delay for any party investigating this subject.

Switching from the Three-Year Opt-Out Program to the Five-Year Opt-Out Program

Q. Please describe the clarification you are seeking regarding the ability of a customer in the three-year opt-out program to switch to the five-year opt-out program.

A. By way of background, PacifiCorp offers one-year, three-year, and five-year direct access programs to existing customers.[11] Customers that select the one-year program can return to cost-of-service rates without penalty after completing

[11] Qualifying new customers may also participate in the NLDA program.

twelve months of direct access service or else select another direct access option for which the customer is eligible upon the completion of the twelve-month period. If a customer selects another direct access program, their ability to return to cost-of-service rates without penalty is governed by the terms of the direct access program they select. Customers in the three-year program can return to cost-of-service rates without penalty after three years of direct access service, whereas customers in the five-year opt-out program must provide four-years' notice to return to cost-of-service rates without penalty.

There is no ambiguity in PacifiCorp's tariff regarding the choices that a customer in the three-year opt-out program has after completion of the three-year term. The customer can either choose to return to cost-of-service rates without penalty or else select another direct access option for which the customer is eligible, such as the one-year program, three-year opt-out, or five-year opt-out.

The need for clarification concerns the ability of a customer in the three-year program to switch to the five-year opt-out program (during the annual shopping window) before completing three full years in the three-year program. That is, can the customer elect the five-year opt-out program under the applicable going-forward terms of the five-year program, without penalty, after the end of their first or second full year in the three-year program? I believe that under the structure of PacifiCorp's tariff – as well as the underlying logic of the applicable transition charges – the reasonable answer to this question is "yes." However, based on informal discussions between Calpine Solutions and PacifiCorp in which I have participated, my understanding is that the Company does not agree.

This is a timely issue for resolution in this case because customers currently enrolled in the three-year program may wish to make such an election in upcoming shopping windows, and resolution of the issue in a proceeding such as this one before the shopping window will prevent disputes that would need to be resolved on an expedited basis. Calpine Solutions did not raise this issue in its opening testimony because discussions with PacifiCorp on the subject were ongoing in the hopes that there would be no disagreement necessitating Commission resolution, but now it appears there is a disagreement that needs to be resolved by the Commission with respect to PacifiCorp's tariff at issue in this general rate case.

Consequently, I am recommending that the Commission make clear in its order in this case 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 penalty, after the end of the first or second full year in the three-year program.

Q. Please clarify what you mean by the term "without penalty."

A. Schedule 201 (Net Power Costs Cost-Based Supply Service) in the PacifiCorp tariff requires that direct access customers who wish to return to cost-of-service rates prior to the full term of their direct access service must make a Returning Service Payment.[12] PacifiCorp's Schedule 201 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

[12] PacifiCorp Schedule 201, p. 4.

determining the Consumer's applicable transition credit as specified under Schedule 294."[13] The Returning Service Payment is calculated by multiplying the expected remaining monthly usage under direct access service times the difference between the forward market price at the time of the customer's request to return to Cost-Based Supply Service and the forward market price used for determining the Schedule 294 Transition Adjustment, times 110 percent. When I use the term "without penalty" I mean that the customer would not be subject to the Returning Service Payment.

Q. Is it your understanding that PacifiCorp would require a customer switching from the three-year opt-out program to the five-year opt-out program prior to the end of their three-year term to pay a Returning Service Payment?

A. Yes. As I understand the Company's position, if a customer in the three-year program requests to move into the five-year program after, say, one year in the three-year program, the customer would be subject to the Returning Service Payment for the remaining two years of their three-year opt-out term – even though the customer would <u>not</u> be returning to cost-of-service rates, but rather switching to another direct access program.

Q. Why do you believe that switching from the three-year opt-out to the five-year opt-out should already be permitted without penalty under the structure of PacifiCorp's current tariff?

A. By way of background, direct access customers who are not in the new load direct access program ("NLDA") program are subject to a transition adjustment. The

[13] PacifiCorp Schedule 201, p. 4.

transition adjustment provides a credit or charge for customers who choose direct access service. The transition adjustment is applied either through Schedule 294, Schedule 295, or Schedule 296. 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 (for the first five years).

According to the Company's tariff, Schedule 295 (Transition Adjustment, Three-Year Cost of Service Opt-Out) applies to customers who, among other things, have opted out of Cost-Based Supply service for a <u>minimum</u> of three years. A customer in the three-year opt-out program who switches to the five-year opt-out program would <u>not</u> be violating the minimum term requirements of the three-year program because they would be <u>extending</u> their opt-out from cost-of-service rates, <u>not</u> <u>reducing</u> the term of their opt-out. This extension of the customer's direct access service term stands in obvious contrast to a customer in the three-year opt-out program who requests to return to cost-of-service rates before completing the three-year opt-out. Such a customer would properly be subject to the Returning Service Payment. This situation is fundamentally different from a customer seeking to make a more permanent move to direct access service. Yet it is my understanding that PacifiCorp would treat both situations equivalently, subjecting the customers in both situations to the same Returning Service Payment. This interpretation is inconsistent with the tariff and is fundamentally illogical.

Q. Why do you believe it is illogical to require a Returning Service Payment from a customer that switches from the three-year opt-out program to the five-year opt-out program?

A. First and foremost, 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. A three-year opt-out customer that switches to the five-year opt-out program is not returning to cost-of-service rates. The entire notion of subjecting them to a Returning Service Payment is misplaced and arbitrary. As noted above, 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."[14] If the customer is not returning to PacifiCorp's cost-of-service rates, there is no increased cost to serve the customer and there is no need to compensate PacifiCorp for such non-existent costs.

Q. But would a three-year opt-out customer that switches to the five-year opt-out program be gaining some kind of unfair economic advantage?

A. No. Both a three-year opt-out customer and a five-year opt-out customer are required to pay the same Schedule 200 charges to recover PacifiCorp's fixed generation costs, the latter for five years. A three-year opt-out customer that switches to the five-year opt-out program should be subject to the same Schedule

[14] PacifiCorp Schedule 201, p. 4 (emphasis added).

296 charges as any new five-year opt-out customer. This means that a three-year opt-out customer that switches to the five-year program would be subject to a longer period of transition adjustments overall – and would pay Schedule 200 charges for as long as six or seven years (depending on whether they switched from the three-year program after year 1 or year 2) compared to five years of Schedule 200 payments for a new five-year opt-out customer. There is no unfair economic advantage conveyed to a three-year customer from this arrangement.

Moreover, allowing the three-year opt-out customer to switch to the five-year program after one or two years does not convey an unfair economic advantage compared to a customer in the one-year direct access program because the underlying transition adjustment calculations are identical between the two programs. That is, in any given TAM year, the Schedule 294 transition adjustment for the one-year program is identical in its core calculation to year one of the Schedule 295 transition adjustment for the three-year program, even though the charges between the two programs have somewhat different rate designs.[15]

A one-year direct access customer is free to return to cost-of-service rates after twelve months of direct access service or, if they qualify by meeting the minimum load requirements, enter the five-year program without penalty. In contrast, a three-year direct access customer cannot return to cost-of-service rates after twelve months without penalty. But having paid the same transition charge

[15] The one-year program has a different TAM rate each month (further differentiated by heavy load hours and light load hours) and the three-year program has a flat TAM rate for a given year (also differentiated by heavy load hours and light load hours), but it is calculated using identical inputs for year 1 as the one-year program.

(including Schedule 200) as a one-year direct access customer, there is no unfair economic advantage conveyed to the three-year opt-out customer by allowing them to enter the five-year program without penalty after twelve months in the three-year program, just as a one-year direct access customer can do after twelve months in the one-year program.

Q. Please summarize your recommendation to the Commission concerning the ability of a customer in the three-year opt-out program to switch to the five-year opt-out program.

A. I recommend that the Commission make clear in its order in this case 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.

Q. Are there any changes to the language of PacifiCorp's tariff that are required to accommodate allowing a customer in the three-year program switching to the five-year program?

A. No, I do not believe so. However, if PacifiCorp identifies any provisions of its tariff that contradict my proposal, I recommend that the Commission also 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 I explained above.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.