BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of The PUBLIC UTILITY COMMISSION OF OREGON Investigation into the Treatment of New Facility Direct Access Load	))))))))	UM 1837 REPLY COMMENTS OF CALPINE ENERGY SOLUTIONS, LLC

INTRODUCTIONS AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its reply comments to the Public Utility Commission of Oregon ("Commission") in this investigation. Calpine Solutions continues to recommend that the Commission develop a program that allows new customers to obtain direct access service without being subject to the full amount of transition charges and the limited time available during the annual enrollment windows that apply to the terms of direct access service for existing customers.

As noted in Calpine Solutions' opening comments, the primary barriers to direct access that currently exist are the stranded cost charges (referred as "transition charges" in Oregon law) and the limited time available during the enrollment windows for eligible customers to notify the utility of their desire to move to market-based pricing and commercially transact with an Electricity Service Supplier ("ESS"). These requirements exist in part to address a need to protect remaining cost-of-service customers from paying for the existing generation commitments made by the utility prior to the time that the direct access customer elects to buy generation services from the market. However, in the case of a *new* customer that elects to purchase generation directly from the market and not from the utility from day one, there is no need for limited enrollment windows and the current level of transition charges.

Most parties to this proceeding appear to agree that the Commission should implement a program with reduced or eliminated transition charges for new customers. While some parties have raised possible concerns with implementation of such a program, none of the issues raised should preclude the Commission from implementing a new direct access program. Calpine Solutions' opening comments responded to the questions posed by Staff, and Calpine Solutions stands by those responses without repeating them here. The remainder of these reply comments will respond to the discrete issues raised by other parties concerning implementation of a direct access program designed for new loads.

REPLY COMMENTS

1. Relieving New Loads of Transition Charges Will Not Cause Cost Shifts

Some parties speculate that the utility may incur stranded generation costs to serve new loads before the utility could have a reasonable expectation that new load would purchase generation from the utility. However, these arguments overlook that the utility should not make commitments to generation resources to serve a load prior to any assurance the load will choose to locate in the utility's service territory and purchase generation services from the utility.

Portland General Electric Company ("PGE") and PacifiCorp both suggest the program should be limited to new loads that are large enough that they would not be included in the utilities' regression-based load forecasts. *See PGE Comments* at 9; *PacifiCorp Comments* at 2, 3. PacifiCorp sets this limit at 10 megawatts ("MW") and proposes an additional "balancing" test where PacifiCorp can decide to deny entry to the program even for new loads over 10 MW. The

Citizens Utility Board ("CUB") likewise asserts that the utilities are already planning and "taking action" to serve projected load growth through 2040. *CUB Comments* at 2. But these arguments arise from no evidence. The incorrect premise of these arguments is that there is no way to adjust the regression-based load forecast before incurring generation investments to serve the forecasted load.

As Staff points out, the question is whether the utilities can adjust their load forecasts *prior to acquiring* new generation commitments. *See Staff Comments* at 9. Calpine Solutions agrees. No evidence has been put forth demonstrating that a utility's regression-based load forecast cannot be adjusted after the new prospective customer commits to direct access. Accordingly, there is no basis to assume that the utility will incur any generation costs to serve a customer that elects to take direct access service before it ever takes generation service from the utility.

Staff also suggests, however, that it might be appropriate to develop a reduced transition charge that would apply to new loads. Staff proposes one method to calculate modified transition adjustments for the program could be to calculate the utility's "excess capacity costs at a given time, and split those costs evenly among new load program participants." *Staff Comments* at 13. Staff's specific proposal raises significant logistical concerns, and Calpine Solutions would need more information to respond in detail. As noted earlier, no explanation has yet been provided of how a utility would prudently incur generation costs to serve new customers moving immediately to direct access or why it would be reasonable to assign any such costs to those customers. However, in the spirit of compromise and addressing the concerns of other parties, Calpine Solutions would consider further discussion of a partial or reduced charge, as opposed to elimination of all transition charges, if the utility could identify a valid method to demonstrate that specific stranded generation costs are attributable to new customers.

2. The Program Would Not Give New Customers a "Free Option"

Some parties have suggested that a program exempting new customers from transition charges would amount to a "free option" to choose direct access whenever it is economically beneficial to them. *See PGE Comments* at 6, 10; *see also Staff Comments* at 9-10; *CUB Comments* at 4. These arguments overlook the basic requirements of the direct access law and Oregon's clear directive in favor of retail choice.

The legislature declared that "retail electricity consumers that want and have the technical capability should be allowed, either on their own or through aggregation, to take advantage of competitive electricity markets as soon as is practicable." Or Laws 1999, ch 865 at preamble. The law instructs the Commission to "eliminate barriers to the development of a competitive retail market structure" and "to mitigate the vertical and horizontal market power of incumbent electric companies * * * ." ORS 757.646(1). The law provides no basis to arbitrarily assign above-market generation costs to customers that have not caused the utility to incur any generation commitments and that have never purchased any generation services from the utility.

Parties in support of a direct access program for new customers have proposed reasonable program parameters that eliminate a perceived cost-shift risk for nonparticipating customers. These requirements would require the new customer to make an advance binding commitment to enter the program and after such commitment would require a significant advance notice thereafter in order to move off direct access and to purchase generation from the utility's cost-of-service generation portfolio. Thus, there would be no free option to move back and forth between direct access and cost-of-service offerings. Instead, there is a one-time opportunity that must be exercised well before the customer ever begins taking service from the utility and before any generation costs are incurred by the utility.

Similarly, PGE, PacifiCorp and CUB assert the program should be limited to green energy supply as a means of mitigating the perceived "free option" to program participants. *See PGE Comments* at 7, 11; *PacifiCorp Comments* at 8; *CUB Comments* at 6. However, there is no basis in the existing law for imposing a green-only limitation on enrollment in any direct access program. While Senate Bill 987 would have statutorily implemented such a restriction, that bill was not enacted and thus created no exceptions to the general policy that direct access should be available without product limitations. As discussed in opening comments, however, direct access customers already must comply with Oregon's renewable portfolio standard ("RPS") requirements. Therefore, the new program will result in no reduction in use of green energy in Oregon and very likely will result in an increase in use of green energy by removing obstacles to retail choice for customers who would prefer a carbon-free or otherwise greener product than available in the utility's least-cost portfolio.

However, if the Commission determines that it does have the authority to impose a green additionality requirement on the program participants, Calpine Solutions recommends that the Commission consider an additionality requirement that falls short of 100-percent green energy. The Commission could simply require that participation in the program requires the customer's supply to exceed the generally applicable RPS requirement. For example, if the RPS requirement would be 25 percent for the customer's load for the year in question, the new customer could meet the additionality requirement by purchasing energy with an RPScompliance of 26 percent or more. This requirement would also meet the policy objectives underlying the other parties' proposals for a green requirement.

3. The Existing Long-Term Program Caps Should Not Apply

PGE and PacifiCorp both propose to use the existing participation caps on their respective long-term opt-out programs. *See PGE Comments* at 12; *PacifiCorp Comments* at 8. But this proposal is unreasonable.

The program caps in the existing programs are designed to prevent a sudden and significant *loss of load* that the utility is already serving and a resultant cost-shift to cost-of-service customers. That concern does not apply in the case of a *new* customer locating for the first time in the utility's service territory and for which the utility should be able to avoid making commitments to generation resources and creating the potential for a cost shift to the cost-of-service customers. The utilities have identified no specific harm that will result without caps on the amount of load that can elect to move immediately to direct access.

While the existing caps were developed in past proceedings either by agreement or non-objection as part of numerous other program parameters, imposition of those types of caps may not be allowable over objection by a party under the direct access law, which does not specifically include caps as a permissible condition on direct access programs. *See* ORS 757.607 (discussing permissible conditions on direct access). Absent some compelling economic justification, caps would likely be unlawful. As discussed above, while such a justification may exist in the case of a large amount of existing load leaving the utility's cost-of-service offering, no party has identified any similar reason in this proceeding for caps in a program for new loads.

Additionally, in the case of PGE, the existing cap of 300 average MW of load in PGE's long-term opt-out programs is already nearly full. Thus, using the same cap for a new program would mean that the new program would not be available to very many interested customers.

Staff agrees that use of the existing caps for the existing programs would be inappropriate, but suggests that some level of cap may be appropriate for the new customers, at least initially. *See Staff Comments* at 14. Given the concerns of other parties, a reasonably tailored cap for a new program may be allowable so long as it is not designed to deter or significantly limit participation in the program and is subject to reevaluation after the initial years of the program or when and if the cap is met.

4. The Utility's Provider-of-Last-Resort Obligations Are Not an Obstacle

PGE raises concerns regarding its provider-of-last-resort obligation and asserts it may be short capacity and ancillary services if direct access customers return to PGE in an emergency. *PGE Comments* at 10. These assertions are unfounded.

Under the existing provider-of-last-resort rules, the returning customer must pay for market-based pricing until the multiyear notice period expires for return to cost-of-service generation. *See* OAR 860-038-0280(2) (emergency default service and default service are standard offer service); OAR 860-038-0250(2) (standard offer service is market-based pricing with transition adjustments). As PacifiCorp acknowledges, "tying the emergency supply service to market prices protects other customers from the increased cost of the consumer's re-entry." *PacifiCorp Comments* at 6. Given that the Pacific Northwest is not capacity constrained, it is difficult to understand PGE's concern.

Additionally, PGE already supplies ancillary services to direct access customers through its transmission services sold to the ESS serving customers interconnected to PGE's system.

PGE's OATT, Attachment N, governs Retail Network Integration Transmission Service Provided for Oregon Retail Direct Access and addresses this very issue.[1] Attachment N sets forth the charges the ESS must pay PGE for ancillary services to serve the direct access customer. Given that PGE already must plan to supply ancillary services to the direct access customer under its OATT, PGE should have no problem supplying those same ancillary services, that were already being supplied by PGE, if the customer returns to have its generation supplied by PGE. The only difference would be that instead of the ESS paying PGE for the ancillary services, the customer returning in an emergency would be paying PGE directly for those same ancillary services through the cost-of-service rates. If PGE believes its provider-of-last-resort charge does not capture those costs appropriately, PGE is free to propose changes to its charge. *See* OAR 860-038-0250(2)(c) (requiring, "The standard offer rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the standard offer rate option"). But this concern serves no basis to refuse to implement a reasonably designed direct access program for new loads.

In short, provider-of-last-resort obligations are not an impediment to the program.

5. The Commission Should Protect Against Abuse of Market Power by Utilities

PGE and PacifiCorp both ask to be authorized to themselves offer the same type of program for new loads under a voluntary renewable energy tariff ("VRET"). *PGE Comments* at 11-12; *PacifiCorp Comments* at 8-9. It is not clear that this program for new customers fits within the framework of the VRET, and in any event the Commission should closely scrutinize any utility proposal for a VRET.

[1] http://www.oasis.oati.com/PGE/PGEdocs/PGE_OATT_12122017.pdf.

The 2014 VRET legislation required the Commission to study whether the utilities should be allowed to offer a green product offering, but also required any such offering to meet several criteria, including that it would not adversely affect development of the competitive retail market or result in any cross subsidization of the VRET costs by the utility's other customers. *See* Or. Laws 2014 ch 100, § 3. In Order No. 15-405, by a 2-1 vote, the Commission reluctantly determined it would allow the utilities to offer a VRET, but *only if* the proposed offering met the same requirements and restrictions of direct access, among other limitations. PGE and PacifiCorp both declined to file such a proposed VRET.

Calpine Solutions cautions against allowing for use of the VRET legislation in this context. There are clear and well-documented risks associated with a VRET offering by a utility. Those risks include cross subsidization by nonparticipating customers, financial risks to the utility itself which could harm nonparticipating customers, and the risk the utility or its employees will be motivated to engage in anticompetitive behavior. Thus, the Commission's rules normally require utilities to participate in direct access only through an affiliate and impose strict requirements for any utility-offered service in the competitive markets. As the Commission's rules clearly state, "The Code of Conduct rules (OAR 860-038-0500 through 860-038-0640) govern the interactions and transactions among the electric company, its Oregon affiliates, and its competitive operations," and are "designed to protect against market abuses and anti-competitive practices by electric companies in the Oregon retail electricity markets." OAR 860-038-0500; *See generally* Order No. 01-073; Order No. 06-225. Among other things, the rules were originally intended to "make certain that 'sweetheart' deals based on inside information do not compromise the fair treatment requirements of SB 1149," Oder No. 01-073 at

13; "to ensure that competitors are treated fairly," *id.* at 16; and "eliminating opportunities for cross-subsidization and cost shifting between regulated and competitive operations so that market participants can compete on a level playing field," *id.* These basic protections are required by Oregon's direct access law and are specifically identified as considerations under the VRET law. ORS 757.646(3); Or Laws 2014 ch 100, § 3(3), (4). These concerns do not lose relevance in the context of new customers wishing to exercise retail choice from the outset of their relationship with the utility, especially considering that the utility is in the unique position of having advanced notice of interest by a customer in locating to the utility's service territory.

Given the obvious risks inherent in a special offering by a utility, the only rational basis to allow the utilities to offer a VRET under a new load program would be if the utilities are able to offer some product that is somehow unavailable from competitive suppliers. *See* Order No. 15-405 at 1 (requiring that "VRET product design should be sufficiently differentiated from existing direct access programs"). Absent some showing that the utility can supply green products not available in the competitive market, the Commission should again find there is no public interest benefit to allowing the utility to offer a VRET under this program.

Additionally, the proposal to use the 2014 VRET legislation would only apply to the program for new loads if the Commission implements a green-only limitation on the program for new loads. Without use of the VRET legislation, the direct access law and the Commission's Code of Conduct rules generally require the utility to participate in direct access only through an affiliate or otherwise impose requirements inconsistent with the VRET concept. Or. Laws 2014 ch. 100, § 3(5) (allowing the Commission to waive ORS 757.646 and Code of Conduct rules thereunder for a qualifying VRET). But the VRET must be a green product offering. Thus, the proposal to allow for use of a VRET offering is only relevant if the Commission implements a green-only limitation on the new direct access program. As discussed above, however, there is no statutory basis to impose green-only limitation on the new direct access program, and therefore it appears the VRET proposal does not fit here for that additional reason.

CONCLUSION

For the reasons explained above and in opening comments, Calpine Solutions recommends that the Commission develop a program that allows new customers to obtain direct access service without being subject to the full amount of transition charges and the limited time available during the annual enrollment windows that apply to the terms of direct access service for existing customers.

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