

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1837

In the Matter of)
)
PUBLIC UTILITY COMMISSION OF)
OREGON,)
)
Investigation into the Treatment of New)
Facility Direct Access Load.)
_____)

**OPENING BRIEF
OF THE
OREGON CITIZENS' UTILITY BOARD**

September 8, 2017

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Introduction

The Oregon Citizens' Utility Board ("CUB") submits its Opening Brief in this docket to address whether, in the absence of legislation, the Oregon Public Utility Commission ("Commission") has the authority to eliminate transition adjustments for commercial customers that are new to the utility's system. On May 4, 2017, Commission Staff ("Staff") issued a memo outlining the legal and legislative developments of Direct Access, which CUB does not dispute. As Staff noted stated in the memo, during the 2017 Oregon legislative session, legislation was proposed that would have removed transition adjustments for "new commercial load at new sites choosing direct access over cost of service."¹ Because rates may not discriminate or give preferential treatment to customers within the same consumer class, and elimination of transition adjustments would shift costs to other utility customers, the Commission lacks the authority to make such a change.

¹ Staff Memo, UM 1837, p. 3 (May 16, 2017).

Argument

I. THE COMMISSION CANNOT AUTHORIZE DISCRIMINATION OR PREFERENTIAL TREATMENT WITHIN A CUSTOMER CLASS.

Since there is no authority for a utility to give preferential treatment or discriminate among members of the *same* customer class, the Commission cannot eliminate transition charges for select commercial customers because they are new to the utility's system. It is a basic tenet of ratemaking that rates must be just, reasonable, and non-discriminatory. *See* ORS §§ 757.282; 757.325. While the Commission may authorize differential rates among classes of customers, Oregon law "prohibits discrimination among members of the *same* consumer class..." *American Can Co. v. Lobdell*, 55 Ore. App. 451, 463 (1982). Rate discrimination includes giving one customer an "undue or unreasonable preference or advantage" over another customer, ORS § 757.325, or charging different rates to customers within the same customer class. ORS § 757.310 (2) (forbidding utilities from charging different rates to customers "for a like and contemporaneous service under substantially similar circumstances."). *See also Publishers Paper Co. v. Davis*, 28 Ore. App. 189, 197 (1977) (upholding differential rates based on customer class because each *class* "receives its own distinct form of service and has its own distinct set of circumstances"); *American Can Co. v. Davis*, 28 Ore. App. 207, 227-228 (1977) (affirming differential rates among classes of customers).

Eliminating transition adjustments for new commercial customers would afford those customers preferential treatment over current commercial customers who are still subject to transition adjustments. Similarly, transition adjustments would be rendered a discriminatory rate, because they would apply against current commercial customers, regardless of whether they have been on the system for 20 years or one day. If the Commission authorized a discriminatory rate within a customer class, individual members of the class would be incentivized to engage in gamesmanship. For example, commercial customers may try to be deemed "new" customers through artificial measures in order to avoid transition

adjustments. Similarly, customers may alter site developments or connections to allow the site to be considered “new”. It is exactly these types of scenarios that rules against discriminatory and preferential rates among members of a customer class are designed to prevent.

Moreover, much of the original basis for imposing transition adjustments is as true today as it was in 2000. *See* Order No 00-596 (adopting transition adjustments to effectuate SB 1149). Current utility customers have paid long-term investments to develop the utility’s system. Even if a new commercial customer were to obtain service through Direct Access, those customers still rely on the utility’s system to be its provider of last resort and long-term planning to provide distribution infrastructure. If transition charges are eliminated for those customers, they are effectively able to rely on a system paid for by existing customers without contributing at all to that system.

II. DIRECT ACCESS PROGRAMS MAY NOT SHIFT UNWARRANTED COSTS TO UTILITY CUSTOMERS.

Even if eliminating transition adjustments was not discriminatory, the Commission would still have to find that elimination would not shift *any* unwarranted costs to other utility customers. SB 1149, Section 8 (“provision of direct access . . . must not cause the unwarranted shifting of costs to other retail electricity consumers of the electric company.”). *See also* SB 1149, Section 8 (2) (requiring transition charges “that reasonably balance the interest of retail electricity consumers and utility investors.”).

Additional costs would almost certainly be shifted to a utility’s current customers if new customers are no longer required to pay transition adjustments. While utilities have additional experience integrating Direct Access into their planning forecasts, those forecasts have been premised on all customers, including new commercial customers, paying transition adjustments for five years if they choose Direct Access. Indeed, CUB has participated in multiple utility planning processes and is unaware of any utility analysis that contemplated the impact to load if transition adjustments for new commercial customers were eliminated.

Moreover, it is a common refrain of commercial customers that the expense of transition adjustments prevents additional customers from switching to Direct Access. If this is true, the number of new commercial customers who choose Direct Access would only exceed current utility estimates if the transition adjustments were eliminated. The costs a utility had assumed to meet its projected new commercial customer load would then fall on the utility's current customers to assume.

Conclusion

For the foregoing reasons, CUB does not believe the Commission has the legal authority to eliminate transition adjustments for new commercial utility customers.

Dated this 8th day of September, 2017.

Respectfully submitted,

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