

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

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

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits its reply legal brief to the Public Utility Commission of Oregon (“Commission”) in this investigation. As Calpine Solutions noted in its opening brief, it appears that the legislature assumed the Commission already possessed the authority to implement the directives of the proposed Senate Bill 979, including the authority to exempt new large customers from transition charges. *See Calpine Solutions’ Opening Brief* at 1-2. The thorough briefing of other parties, including the Commission Staff and the Northwest and Intermountain Power Producers Coalition (“NIPPC”), confirms the legislators’ conclusion was indeed correct. The statutory considerations at issue – unwarranted cost-shifting, provider-of-last-resort obligations, and undue discrimination – impose no bar to elimination of transition charges for new customers. Because these points were already well articulated by other parties’ briefs, this reply brief will merely summarize the critical points with which Calpine Solutions’ agrees.

REPLY ARGUMENT

1. New Loads May Be Exempted from Transition Charges without Violating the Direct Access Statute’s Proscription Against Unwarranted Cost Shifting

Other parties have demonstrated that the existing direct access statute provides no bar to

exempting new customers from transition charges. The direct access statute allows transition charges to the extent necessary to prevent unwarranted cost shifting, but only if those transition charges are limited to the costs of “uneconomic utility investments.” See ORS 757.607(2) (allowing inclusion of “transition charges” in rates); ORS 757.600(31) (definition of transition charge means “a fee or charge that recovers all or a portion of an uneconomic utility investment”); ORS 757.600(35) (definition of “uneconomic utility investment”). Calpine Solutions agrees with NIPPC that term “uneconomic utility investments” is expressly defined in the law using past-tense phrasing to specify that such uneconomic investments, and thus any transition charges to recover such investments, include only investments that were incurred *prior to* a customer’s election to leave the utility’s cost-of-service portfolio in favor of direct access. See *NIPPC’s Opening Brief* at 6-7. As NIPPC points out, where the utility has never served the load, nor reasonably incurred new generation investments planning for such load, no such uneconomic utility investments are ever incurred or assignable to that new load. *Id.* at 7.

Additionally, Staff correctly notes there is generally no statutory requirement that the Commission approve transition adjustment charges or credits at all. *Staff’s Opening Brief* at 6. Thus, there is no bar against exempting new large customers from transition charges.

2. Provider-of-Last-Resort Obligations Do Not Conflict with Exempting New Customers from Transition Charges

While the incumbent distribution utility may have provider-of-last-resort obligations, other parties have conclusively established that such obligations do not necessitate imposition of a transition charge on new customers. As NIPPC established, the Commission can allow utilities to provide customers desiring to return to the utility’s system with service at market-based rates, rather than standing ready to provide service on a cost-of-service basis, and the Commission can

even limit or bar the return to cost-of-service rates altogether. *See NIPPC's Opening Brief* at 10 (citing ORS 757.622 & ORS 757.603(3)(b)). The provider-of-last-resort obligation is therefore no bar to exempting new customers from transition charges.

3. Eliminating Transition Charges for New Load Does Not Create Undue Discrimination

NIPPC and Staff have thoroughly demonstrated that no unlawful discrimination is likely to occur if new customers are exempted from transition charges. *NIPPC's Opening Brief* at 11-13; *Staff's Opening Brief* at 7. As Staff and NIPPC note, the two statutes at issue – ORS 757.310(2) and ORS 757.325(1)-(2) – have been broadly interpreted by the courts to allow different treatment for different customers where some reasonably articulated justification exists for the different treatment. *See, e.g., Chase Gardens, Inc. v. Or. Pub. Util. Comm'n*, 131 Or App 602, 609 (1994). In the case of a new customer, the difference in circumstances is plain to see because that customer has no prior relationship with the utility and may not ever locate in the utility's service territory but for the option to use direct access without transition charges. No unlawful discrimination will occur in these circumstances.

CONCLUSION

As the legislature appears to have already assumed, the Commission is fully empowered to offer direct access service to new customers without transition charges and restrictive entrance requirements that apply to existing customers.

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