

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of)	UM 1837
)	
The PUBLIC UTILITY COMMISSION)	OPENING LEGAL 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 opening legal brief to the Public Utility Commission of Oregon (“Commission”) in this investigation. The Commission’s prehearing conference memorandum adopts the agreement of the parties to submit opening briefs on legal issues that might arise in this investigation into treatment of new loads that seek to obtain direct access service.

This proceeding is an outgrowth of the Oregon legislature’s recent consideration of Senate Bill 979. That bill proposed to exempt new customer loads from payment of transition charges and other restrictive elements of direct access programs for existing cost-of-service customers if the new customer obtained 100 percent renewable energy from an electricity service supplier under Oregon’s direct access law. Calpine Solutions’ understanding is that the bill did not proceed out of committee hearings in large part because there were substantial questions as to why the Commission could not implement such a program already without any amendments to

existing direct access law.¹ Thus, it appears that legislators were interested in implementing such a program but saw no need for new legislation.

Calpine Solutions understands that Commission Staff would like to address threshold legal issues related to offering options similar to the proposal in Senate Bill 979 to new customers under Oregon's existing utility laws. Through communications with the parties, Staff has identified the following legal issue:

Whether, under existing Oregon law, the Commission can modify the applicability of transition charges to new customer direct access loads, which Staff suggested might implicate the following sub-issues: unwarranted cost-shifting, provider of last resort obligations, and undue discrimination.²

Calpine Solutions is unclear of Staff's position on this question.

As a general matter, it is important to keep in the mind the purpose of the existing direct access law in analyzing any legal issues that might be presented in its implementation. The Legislative Assembly declared that 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 specifically instructs the Commission to develop policies 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). Given

¹ See Audio Recording, Senate Committee On Business and Transportation, S.B. 979, March 3, 2017, at 1:11 (comments of Senator Beyer in response to Walmart's witness); see also Audio Recording, Senate Committee On Business and Transportation, S.B. 978 and S.B. 979, April 17, 2017, at 51:00 (comments of Senator Beyer, responding to Senator Girod's proposal to pursue S.B. 979 to open up service of renewable energy to competition, that "particularly with new loads" the Commission Chair informed Senator Beyer that the Commission wants to be supportive of such a proposal).

² No other party identified any other legal issues that should be addressed.

these legislative directives, it is eminently reasonable to develop a direct access program that promotes economic development in the state and attracts new businesses that might not otherwise locate to Oregon, as Senate Bill 979 proposed and as this investigation will hopefully implement.

In the abstract, it is difficult for Calpine Solutions to imagine why the Commission could not limit or eliminate the transition charges and other challenging elements of the direct access programs in the case of a new customer that has never committed to take service from the utility's cost-based, least-cost portfolio. Such a customer may not locate in the utility's service territory *but for* the option of purchasing generation services through a competitive offering without paying transition charges. These types of economic development rates have been offered historically throughout the country, including in Oregon, and there is no basis to assume such an offering to a new customer would contradict the legislative objectives of the direct access law. Therefore, instead of responding to arguments other parties may or may not make, Calpine Solutions looks forward to reviewing other parties' briefing on the issue identified by Staff, and will wait until responsive briefing to respond any other parties' specific legal arguments.

In sum, as the legislature may have already assumed, Calpine Solutions does not foresee any insurmountable legal issues if the Commission elects to offer direct access service without transition charges and restriction entrance requirements to new customers, but will address any concerns that other parties may raise.

DATED this 8th day of September 2017.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)

515 N. 27th Street

Boise, Idaho 83702

Telephone: (208) 938-2236

Fax: (208) 938-7904

greg@richardsonadams.com

Of Attorneys for Calpine Energy Solutions, LLC