BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Investigation Into Proposed Green Tariff	)))))	UM 1953 - Phase II CALPINE ENERGY SOLUTIONS, LLC'S CLOSING BRIEF

INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its closing legal brief to the Public Utility Commission of Oregon ("OPUC" or "Commission") in this proceeding.

Calpine Solutions continues to support the position of the Northwest and Intermountain Power Producers ("NIPPC") in this phase of the proceeding and directs the Commission to NIPPC's testimony and briefs for issues not specifically addressed in Calpine Solutions' briefs.

Calpine Solutions filed its opening brief separately to emphasize that the Commission should deny Portland General Electric Company's ("PGE") proposal to modify the Commission's Voluntary Renewable Energy Tariff Guidelines ("VRET Guidelines") Six and Seven. As explained previously, these two requirements are the critical protections for the competitive retail market that the Commission previously found necessary in order for a VRET to be found in the public interest, and the record does not support revision to these protections. In this closing brief, Calpine Solutions responds to arguments of other parties with respect to Guidelines Six and Seven. As explained below, no party has presented a persuasive reason to amend the protections afforded by Guidelines Six and Seven, and therefore the Commission should not revise those guidelines.

ARGUMENT

Guidelines Six and Seven are critically important protections that mitigate the risk of an incumbent utility using its vertical and horizontal market power to detriment of the competitive retail market. These protections do not bar a utility from offering a reasonably designed VRET, as PGE's successful offering of the Green Energy Affinity Rider ("GEAR") demonstrates. But these protections are still necessary to ensure that a VRET offering does not harm non-participating customers or undermine the competitive retail market that has developed in response to Oregon's direct access law. The record in this case demonstrates that the circumstances giving rise to Guidelines Six and Seven – namely, the incumbent utilities' inherent monopoly status and vertical and horizontal market power – have not changed since 2015, and therefore the record does not support revision to those requirements.

A. The Commission Should Retain the Protections of the Competitive Retail Market in Guideline Six

As explained in Calpine Solutions' opening brief, Guideline Six protects against the incumbent utility offering a green tariff on more favorable terms and conditions than the same product could be offered through direct access. There is no basis to abandon Guideline Six, and even if the Commission adopts some modification to the language of Guideline Six, it should retain the important substantive protections contained therein.

PGE's opening brief misapprehends the purpose of Guideline Six in an attempt to justify eliminating its protections. Taking the language Guideline Six out of context, PGE argues that the "mirror condition" would require the Commission lower the long-term direct access ("LTDA") and New Load Direct Access ("NLDA") program participation limits because those

limits are higher than the existing limit in the GEAR program.[1] Under this incorrect theory of Guideline Six, the mirror condition requires the Commission to *reduce and further limit* opportunities under the direct access programs. In other words, PGE suggests that Guideline Six allows the utilities to ratchet back the direct access offerings based on limitations the utilities themselves might propose in a VRET. From that incorrect premise, PGE advocates Guideline Six should be abandoned to avoid such an unexpected result.

But PGE's argument is without merit because Guideline Six does not require further limitations in the direct access programs. As NIPPC's witness correctly testified, "the point of it was not to create a ratchet to pull back opportunities for customers to go off of the utility, the point of it was to ensure that the new utility program did not in some way hinder customers from accessing the Direct Access program."[2] The limitations existing in the direct access programs have been developed over time, largely due to utility proposals ostensibly intended to limit the perceived risk of unwarranted cost shifting under the direct access law.[3] When the utilities proposed to use VRETs, Staff proposed the mirror condition because a utility VRET offering with "more flexible terms than direct access could amount to an unreasonable advantage for the utility."[4] The intent and context of Guideline Six is further evidenced by the recording of the public meeting where it was adopted. As initially proposed by Staff, the condition would have barred any VRET with terms and conditions more favorable than those in the direct access programs.[5] However, the representative for Renewable Northwest recommended that a utility

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1 *PGE's Op. Br.* at 14.
2 Tr. at 17 (Oct. 8, 2020).
3 ORS 757.607(1).
4 *In re Public Utility Commission of Oregon, Voluntary Renewable Energy Tariffs for Non-Residential Customers* (*hereafter* "*In re VRETs*"), Docket No. UM 1690, Order No. 15-405, App. A at 13 (Dec. 15, 2015).
5 *Id.*

should be allowed to offer a VRET "with terms and conditions that may be more flexible than those offered on a direct access[,]" but if it did so the Commission should consider "changing the conditions of direct access to try and level the playing field."[6] Commissioner John Savage agreed with this revision to Staff's proposal, and after his motion for such modification was agreed to by Commissioner Stephen Bloom, it became incorporated into the final Guideline Six in Order No. 15-405.[7]

However, there is no basis in the legislation itself or the extensive record that led to the development of Guideline Six that the VRET program should serve as a basis to further limit the direct access program, and such an application of Guideline Six would flip the intent of the condition on its head. For that same reason, Calpine Solutions disagrees with the suggestion in Staff's opening brief that the purpose of Guideline Six is to ensure than neither the VRET nor direct access have an advantage over one another.[8] As explained above, the purpose of the condition was to protect the direct access market. Therefore, PGE's reliance on this line of reasoning does not justify eliminating the protections of Guideline Six.

Next, PGE asserts that Guideline Six should be eliminated because it contradicts Guideline Five.[9] However, as Staff correctly notes, Guideline Five requires that the VRET be sufficiently differentiated from direct access programs to ensure that "these somewhat competing programs are designed to . . . appeal to different customer preferences" and that the VRET is not

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[6] OPUC Public Meeting Dec. 14, 2015, Docket No. UM 1690, Video Recording at 1:06:55 (comments of Michael O'Brien).

[7] OPUC Public Meeting Dec. 14, 2015, Docket No. UM 1690, Video Recording at 1:56-1:59 (Commissioner Savage's comments); *In re VRETs*, Order No. 15-405 (allowing the utilities to offer VRETs on terms and conditions that are more favorable than direct access but stating they must "propose changes to their respective direct access programs to match those changes").

[8] *Staff's Op. Br.* at 11.

[9] *PGE's Op. Br.* at 14.

simply an offering of the same basic product on more favorable terms and conditions.[10] While Guideline Five certainly works in tandem with Guideline Six, the two requirements are not contradictory.

PGE and PacifiCorp also both assert that Guideline Six is no longer necessary because the GEAR program is a cost-of-service-plus program, which poses no risk to the competitive retail market.[11] The fact that PGE's program is a cost-of-service-plus program does not mean it poses no competitive risk for Direct Access – the programs remain in direct competition. But this assertion also overlooks the fact that without the protections of Guideline Six, the next VRET offered may not be a cost-of-service-plus rate rider. Notably, Calpine Solutions has not objected to the GEAR program largely because it is a cost-of-service-plus rate rider without a utility-ownership option. However, without the protections of the existing Guidelines, the utilities will not be so restricted in their next VRET offering.

PacifiCorp further asserts that the protections of Guideline Six are unnecessary because the Commission can evaluate the risks and benefits of each VRET when proposed by a utility for approval.[12] But this assertion ignores that the Commission's VRET Guidelines are the rules against which any VRET will be evaluated for compliance with the public interest and the VRET legislation. If Guideline Six is removed, there will be no rule proscribing the utilities from offering VRETs on more favorable terms and conditions than those applicable to direct access.

In sum, Calpine Solutions continues to recommend that the Commission make no changes to Guideline Six or, in the alternative, if changes are to be made, the Commission should adopt NIPPC's alternative language for Guideline Six.

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[10] Staff/400, Gibbens/19.
[11] *PacifiCorp's Op. Br.* at 2-3; *PGE's Op. Br.* at 13-14.
[12] *PacifiCorp's Op. Br.* at 3-4.

B. The Commission Should Not Revise Guideline Seven Because Utility Ownership Presents Risks to the Competitive Retail Market and Non-Participating Customers

As with Guideline Six, the circumstances that gave rise to creation of Guideline Seven have not changed since 2015, and therefore the Commission should not modify the limitations on utility ownership in Guideline Seven.

Calpine Solutions shares Staff's concern that allowing utility ownership in the GEAR program could easily turn the program into a special contract with minimal oversight and should not be allowed.[13] However, Calpine Solutions does not support the modifications to Guideline Seven proposed by Staff. Staff proposes that Guideline Seven could be modified to allow utility ownership so long as the guideline requires that such utility ownership not cause harm to the competitive retail market.[14] For the reasons explained in Calpine Solutions' opening brief, there is no way to assure that a utility-owned VRET will not harm the competitive retail market regardless of what a modified guideline might state.[15] Instead, it is reasonable to assume that such a specialized, utility-owned offering will lead to cross subsidization, the exercise of vertical and horizontal market power, and ultimately harm to the competitive retail market.[16] While PGE and PacifiCorp both advocate for loosening restrictions on utility ownership, neither utility or any other party has identified any meaningful changes in the circumstances of utility monopoly status that supported adoption of Guideline Seven in Order No. 15-405.

In sum, the circumstances that gave rise to Guideline Seven have not changed since 2015, and the risks inherent with utility ownership of a green tariff resource remain a major concern

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13 *Staff's Op. Br.* at 26.
14 *Staff's Op. Br.* at 14-15.
15 *Calpine Solutions' Op. Br.* at 12-17.
16 *Id.*

with any special product offering. Accordingly, the Commission should reject proposals to modify Guideline Seven.

CONCLUSION

For the reasons explained in this brief and Calpine Solutions' opening brief, the Commission should reject proposals to modify VRET Guidelines Six and Seven.

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