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Via Electronic Mail

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, Oregon 97301-3398
Email: puc.publiccomments@state.or.us

RE: Calpine Energy Solutions, LLC's Comments
Portland General Electric Company's Advice No. 19-02 (Meeting Item 3)

Dear Commissioners:

This comment letter is submitted on behalf of Calpine Energy Solutions, LLC ("Calpine Solutions") in support of Staff's recommended action with respect to Portland General Electric Company's ("PGE") Advice 19-02, implementing a New Load Direct Access Program ("NLDA"). Specifically, for the reasons explained below, Calpine Solutions requests that the Public Utility Commission of Oregon ("Commission") require PGE to refile its tariffs for its NLDA program in a form consistent with the program recently approved for PacifiCorp to make the program available for customers who have committed to the program, while the Commission investigates certain issues raised in PGE's filing. The three issues Calpine Solutions has identified that require further investigation and should thus be removed from the tariff pending further process are: (1) the Resource Intermittency Charge (or the "RIC"); (2) the Resource Adequacy Charge (or the "RAD"); and (3) the Long-Term Market Energy Option. Because all customers opting into the program will be subject to the outcome of the investigation, the Commission should require PGE to accept into the program all customers who have provided written notice committing to the program since the issuance of Order No. 18-341.

COMMENTS

A. Customers Providing Written Notice Should Be Accepted into PGE's NLDA Program Pending Final Approval of the Terms of Service at Issue in the Investigation

After substantial process, the NLDA administrative rules were finalized in Order No. 18-341 on September 14, 2018. The administrative rules became effective immediately upon filing with the Secretary of State on September 18, 2018, and the utilities were technically required to

offer the program at the time of effectiveness of such rules. Unfortunately, however, the order did not specifically direct the utilities to file their compliance tariffs by a date certain. Since that time, electricity service suppliers ("ESSs") and eligible customers have been patiently awaiting the filing of the utilities' tariffs. However, in the interim, Calpine Solutions understands that eligible customers have been supplying written notice of intent to participate in the program to PGE. Under the rules, such notice must be supplied one year or more before energization of the new large load. *See* OAR 860-038-0740(1). Therefore, any delay in the ability to provide such notice could compromise a customer's ability to ever enter the program.

PacifiCorp filed its NLDA tariff on December 14, 2018, and PacifiCorp promptly solicited comments from interested stakeholders in a collaborative workshop. Ultimately, after incorporating comments of stakeholders, PacifiCorp's NLDA program was unopposed and was approved by the Commission on February 26, 2018.

In contrast, PGE's NLDA tariff at issue here was filed on February 5, 2019 – over four months after the administrative rules became effective. Unlike PacifiCorp's NLDA tariff, PGE's proposal contains new provisions not included in PacifiCorp's tariff. However, given that these issues will be resolved before the end of the year, the Commission should not allow the evaluation of these proposals to delay the right of prospective NLDA customers to enter into the program. Customers seeking to expand or locate qualifying new large loads in PGE's service territory should be allowed to commit to do so as of the effectiveness of the Commission's administrative rules. The harm of a delay is significant in the case of the NLDA program. A delay in allowing customers to provide the one-year notice will result in a lost opportunity for individual businesses to locate or expand such loads in Oregon – potentially forever given other competing concerns with such new loads.

Accordingly, Calpine Solutions strongly supports Staff's recommendation that the Commission should provide the option for customers to commit to the program pending the outcome of the investigation of the new aspects of the NLDA program proposed by PGE. Further, Calpine Solutions recommends that the Commission require PGE to honor the written notices provided to PGE by prospective customers to date.

B. There Are At Least Three Issues Warranting Further Investigation

Based on the currently supplied information, Calpine Solutions opposes approval of at least three aspects of PGE's proposed Schedule 689: (1) the Resource Intermittency Charge; (2) the Resource Adequacy Charge; and (3) the Long-Term Market Energy Option. As explained below, each of these proposals is beyond the scope of the required elements of an NLDA program and each proposal currently lacks the necessary support for Commission approval. PacifiCorp's NLDA program recently went into effect without any of these controversial elements.

1. PGE's Proposed Resource Intermittency Charge

The Commission should reject PGE's proposed RIC. PGE states that the RIC is needed

to collect the alleged capacity costs associated with inaccurate scheduling of energy by ESSs. As Staff correctly notes, this is an issue that applies generically to all direct access service in PGE's service territory because all direct access loads are served by a scheduling ESS taking network transmission service under PGE's Open Access Transmission Tariff ("OATT"), as approved by the Federal Energy Regulatory Commission ("FERC"). This is not an issue unique to the NLDA program. Indeed, in PGE's recently completed rate case, PGE made a similar proposal to assess penalties against ESSs that inaccurately scheduled power to their direct access customers. In that case, PGE withdrew the proposal as part of the partial stipulation approved by the Commission in Order No. 18-464.

In addition to the reasons raised by Staff, PGE's proposed RIC should be rejected because the Federal Power Act preempts the Commission from directly or indirectly setting imbalance charges. PGE complains that its FERC-approved Schedule 4-R does not adequately compensate PGE for the costs of providing imbalance service to ESSs taking network transmission service. However, the Federal Power Act unambiguously preempts the Commission from regulating interstate transmission services over which FERC has "exclusive authority to regulate." *See Transmission Agency North. Cal. v. Sierra Pacific*, 295 F.3d 918, 928-31 (9th Cir. 2002) (internal quotation omitted). As PGE acknowledges, FERC is indeed regulating the rates charged to ESSs for inaccurate schedules, and indeed FERC has a body of precedent that sets such charges based upon the difficulty of accurately scheduling energy to retail loads. *See, e.g., Entergy Services, Inc.*, 93 FERC ¶ 61,156, at 61,525 (Nov. 13, 2000). If PGE believes that its current Schedule 4-R charge does not adequately compensate PGE for the costs of such service, PGE should request a change to Schedule 4-R from FERC.

2. PGE's Proposed Resource Adequacy Charge

The Commission should also require PGE to remove the proposed RAC. As Staff explains, this charge also implicates other direct access programs and has impacts beyond just the NLDA program. PGE agrees that adoption of this charge would require revision to the Commission's planning requirements for all long-term direct access loads. While Calpine Solutions is not opposed to consideration of the resource adequacy issue, the issue should be considered in a proceeding where parties are able to present competing proposals to address any resource adequacy issues. PGE's initial proposal for this issue is a significant charge to all NLDA customers of \$9.00 per kW of on-peak demand. To the extent resource adequacy needs to be addressed at all, PGE's proposal overlooks other alternatives that are likely available at lower cost to prospective direct access customers. The Commission should therefore remove PGE's RAC pending an investigation.

3. PGE's Proposed Long-Term Market Energy Option

Finally, Calpine Solutions objects to PGE's inclusion of a Long-Term Market Energy Option in the NLDA tariff, which would appear to allow PGE to enter into a prohibited special contract with new large load customers. PGE describes the Long-Term Market Energy Option as the equivalent of the standard offer option for the NLDA program. However, this proposal is significantly different from the current standard offer options offered to direct access customers.

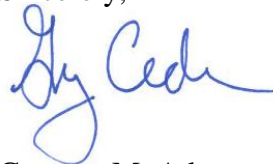
PGE's current standard offer option is a day-ahead market price based on a market price index. *See* PGE's Schedule 489-2, Company Supplied Energy. That is the equivalent of PGE's proposed NLDA's "Company Daily Market Energy Option," contained in proposed Schedule 689-4 and to which Calpine Solutions has no objection. In contrast, under Schedule 689's proposed Long-Term Market Energy Option, PGE will offer individual customers a price "specified in a negotiated contract between the Customer(s) and the Company." Proposed Schedule 689-5. Under this option, "[t]he cost of the energy, capacity, and other attributes specified in the contract will be contingent upon Customer desired supply characteristics and will capture the State of Oregon's renewable portfolio standard requirements." *Id.* Instead of relying on an objectively verified market index, this proposal is a negotiated rate option.

The Commission should reject the Long-Term Market Energy Option. Notably, the utilities proposed during the UM 1837 and AR 614 process that they should be allowed to compete to provide services to the new large loads, but such a provision was not included in the administrative rules approved by the Commission. Therefore, as OAR 860-038-0720(1) confirms, the normal rules for a standard offer service should apply to this aspect of PGE's proposed NLDA tariff. Under the Commission's rules, a standard offer service must be offered in a tariff that ensures the service includes all costs PGE incurs in providing such service. OAR 860-038-0250(2). Additionally, the Commission's administrative rules specifically bar utilities from offering "special contracts" for energy supply that could compete on unequal footing with products offered by ESSs. *See* OAR 860-038-0260(3). PGE's proposed Long-Term Market Energy Option does not meet these requirements because it simply allows PGE to negotiate a long-term energy supply arrangement (plus renewable energy credits) without any meaningful restrictions or oversight. Therefore, this aspect of PGE's NLDA tariff should also be rejected.

CONCLUSION

For the reasons stated above, Calpine Solutions respectfully requests that the Commission require PGE to refile its NLDA tariffs to be made available to eligible customers in the near term without the Resource Intermittency Charge, the Resource Adequacy Charge, and the Long-Term Market Energy Option. Further, Calpine Solutions recommends that the Commission require PGE to honor the written notices provided to PGE by prospective customers to date.

Sincerely,



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LLC