BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

UE 358

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| In the Matter of PORTLAND GENERAL ELECTRIC COMPANY,<br><br>Advice No. 19-02 New Load Direct Access | ) | CALPINE ENERGY SOLUTIONS, LLC'S REPLY BRIEF |

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## INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its reply brief in this proceeding before the Public Utility Commission of Oregon ("Commission" or "OPUC"). Calpine Solutions continues to make the same recommendations as made in its opening brief. To reiterate, the Commission should approve Portland General Electric Company's ("PGE") new load direct access ("NLDA") program with the following modifications:

- The Commission should reject both the Resource Adequacy Charge (referred to as the "RAD") and the Resource Intermittency Charge (referred to as the "RIC"). To the extent that the Commission wishes to address the issue of resource adequacy, a generic docket devoted to these issues is the more appropriate venue. Calpine Solutions does not object to a thorough investigation of this subject, but it should include a close examination into the means by which electricity service suppliers ("ESSs") can self-supply resource adequacy rather than simply accepting the premise that this product can only be provided by PGE.
- The Commission should reject PGE's proposed Long-Term Energy Option in its entirety and instruct PGE to use only an index-based standard offer option that does not count towards the limited program cap.
- With respect to management of the customer enrollment queue and customer enrollment criteria, the Commission should adopt Calpine Solutions' reasonable logistical clarifications, which include:

- Measurement of space remaining under the 119-average-megawatt program cap should be based on the customer's binding financial commitment to distribution facilities;
- Customers should not be excluded from the NLDA program due to a limited use of PGE-supplied start-up energy (up to 1,000 kilowatts) after construction is complete; and
- Customers should not be disqualified from the NLDA program for beginning normal operations after the one-year anniversary of the Commission's administrative rules.

-and-

- Finally, the Commission should review and approve the opt-out agreement that must be executed by the customer to enroll in the NLDA program, after the opportunity for stakeholder review and input.

In this reply brief, Calpine Solutions will respond to the limited number of arguments made by opposing parties that were not directly addressed in the opening brief and refers the Commission to Calpine Solutions' opening brief for all points not addressed herein.

**ARGUMENT**

The Commission should approve PGE's NLDA program with the modifications proposed by Calpine Solutions, the vast majority of which are consistent with the recommendations of Staff, the Alliance for Western Energy Consumers ("AWEC") and the Northwest and Intermountain Power Producers Coalition ("NIPPC"). Although PGE and the Citizens Utility Board of Oregon ("CUB") continue to raise generalized concerns with direct access, their

arguments do not establish a lawful or evidentiary basis to impose the proposed capacity charges on NLDA customers. The generalized concerns of PGE and CUB are already scheduled to be addressed in Docket No. UM 2024, where such matters may be addressed holistically outside the context of a compliance filing such as the instant proceeding. PGE bears "'the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable.'" *Calpine Energy Solutions, LLC v. PUC*, 298 Or App 143, 159, 445 P3d 308 (2019) (quoting ORS 757.210(1)(a)). In this case, PGE has not met its burden of proving the lawfulness or the reasonableness of either the RAD or the RIC.

### A. The Commission Should Reject PGE's RAD Charge

PGE's RAD charge should not be approved. The arguments of PGE and CUB do not overcome the obvious flaws with PGE's proposal in this case.

#### 1. PGE's RAD charge violates the direct access law

Calpine Solutions demonstrated at length that the RAD charge would violate the direct access law. *See Calpine Solutions' Op. Br.* at 7-9. In short, the law provides eligible customers with the right to purchase energy *and capacity* from an electricity service supplier ("ESS") through direct access. Staff, AWEC, and NIPPC agree. PGE and CUB have not demonstrated the lawfulness of the proposed charge.

PGE argues that the direct access law gives the Commission the discretion to determine what energy and capacity products direct access customers should be allowed to purchase in the market and those which it may not. *PGE Op. Br.* at 17. PGE agrees the issue is controlled by the law's definition of "direct access", which is: "the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the commission for an

electric company or the governing body of a consumer owned utility, directly from an entity other than the distribution utility." ORS 757.600(6). Although not entirely clear, PGE appears to assert that the clause "as determined by the commission . . ." qualifies the word "electricity" as opposed to just qualifying the phrase "certain ancillary services."

PGE's interpretation of the statute is misplaced. The argument contravenes the normal grammatical use of the phrases at issue by the legislature. The sentence at issue provides that direct access includes provision of "electricity," which requires no further clarification because it is specifically defined elsewhere in the statute at ORS 757.600(14) to include both energy and capacity. ORS 757.600(6). In contrast, where the sentence at issue describes ancillary services available through direct access, it qualifies that only "certain ancillary services" may be available through an entity other than the distribution utility, and establishes that matter will be "determined by the commission." ORS 757.600(6). PGE's contrary argument – that the Commission can also decide to deny the right to purchase "electricity" from an entity other than the distribution utility – would give the Commission the right to refuse to implement direct access altogether. Such an interpretation contravenes the obvious intent of the statute, including the legislative findings and the law's express directive that all nonresidential customers be allowed direct access. ORS 757.601(1).

PGE further argues that the markets have not developed as expected when the direct access laws were enacted, and therefore the Commission should address that problem in this case. *PGE's Op. Br.* at 17. This argument is also without merit. Even if one were to accept PGE's assertions regarding changed circumstances in the market, the requirements of the direct access law – that customers must have the right to purchase energy and capacity from an entity

other than PGE – cannot be rewritten to conform to changed circumstances. If markets have not developed as intended at the time of enactment of SB 1149, the remedy is for the legislature to amend the direct access law, not for PGE to implement a charge that violates the plain terms of the law as it exists today.

The Commission should conclude that PGE's proposed RAD charge violates the direct access law by denying the right of NLDA customers to purchase capacity through direct access.

**2. The record is insufficient to conclude PGE's RAD charge is necessary at this time**

In addition to being unlawful, Calpine Solutions also demonstrated that PGE's proposed RAD charge is premature and unsupported by the evidentiary record. *See Calpine Solutions' Op. Br.* at 9-14. PGE and CUB have not identified persuasive evidence in the record supporting adoption of the RAD charge in this case.

First, PGE incorrectly asserts that cost-of-service customers are unjustifiably bearing the full costs of ensuring an adequate and reliable system that would support NLDA loads if those loads returned to service by PGE. *PGE's Op. Br.* at 5. PGE also asserts that the Commission "should not approve PGE's NLDA program unless it also addresses the statutory prohibition against unwarranted cost-shifting to remaining cost-of-service customers." *PGE's Op. Br.* at 12-13. These arguments are misplaced because there is no evidence of any cost shifts in this proceeding. There are no cost shifts because PGE does not plan for NLDA loads, which was the underlying premise for relaxed transition charges for such customers in the administrative rules. If any NLDA customers attempt to return to use PGE's generation resources, they must first give three years' advance notice to do so and, unless served by an ESS, must be served by market-priced default service until such notice period ends. *See* Calpine Solutions/100, Higgins/7-8.

NLDA customers would not use PGE's capacity resources during such three-year notice period, and would pay their share for cost-of-service generation resources after expiration of that notice period.

The only scenario relevant to PGE's RAD proposal is a situation where there is no energy available in the market at any price to provide such default service. But the RAD does not prevent that type of "protracted regional electricity shortage." AWEC/100, Mullins/6-7 (quoting Rule N). As PGE agreed at the hearing, PGE would not necessarily add capacity to the region with the RAD, at least in the near term, and instead may just procure additional existing capacity in the region, including potentially from an ESS or other independent power producer. *Id.*; Tr at 74-76.

Similarly, CUB argues cost shifts are already occurring. According to CUB, "COS customers pay for fixed costs of generation that is necessary to support the market that ESSs rely on to serve Direct Access customers." *CUB's Op. Br.* at 5-6. CUB contends that direct access customers only pay the variable costs of these COS-funded resources. *Id.* at 6. CUB further asserts that direct access customers are unjustifiably enjoying low costs at the Mid-C trading hub that result from the investment in renewable energy resources by cost-of-service customers. *Id.* at 8. These arguments are also misplaced.

The record in this proceeding does not support CUB's assertions because there is no basis to conclude the NLDA customers (or any direct access customers) buy their power from PGE-owned generation facilities. The assertion that PGE's cost-of-service customers are selling power to NLDA customers at a loss is not a fact established anywhere in the record. Likewise, CUB's arguments ignore that it is not only PGE's customers who have funded the increased

renewable generation in the region; rather, the increase in renewable resources has resulted from investments by numerous utilities and independent power producers.

CUB's arguments also misconceive the concept of "unwarranted cost shifting" as defined in Oregon's direct access law. The section of the law proscribing unwarranted cost shifts explains that the Commission may prevent such cost shifts through the imposition of "transition charges" that may include "full or partial recovery of the costs of uneconomic utility investments." ORS 757.607(2). The law authorizes charges to prevent stranded costs of the incumbent utility through allowance of transition charges for the utility's "uneconomic utility investments," which are "all *electric company investments*, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and workforce commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable *as a direct result of ORS 757.600 to 757.667, absent transition charges*. ORS 757.600(35) (emphasis added). Likewise, the "transition charges" the Commission may impose are limited to "a charge or fee that recovers all or a portion of an uneconomic utility investment." ORS 757.600(31). The charges authorized are charges for stranded investments PGE made to serve the now-departed customers.

But CUB describes something very different from recovery of stranded costs allowed by Oregon law. CUB does not point to any specific PGE-owned generation asset that has been stranded as a consequence of the direct access customers' departure from the system. Indeed, all parties agree that PGE never planned to serve the 10-aMW NLDA customers in the first place, so it would be impossible for such stranded generation assets to exist. Instead, CUB's argument is concerned more generally with the structure of the wholesale market and a perception that

PGE's cost-of-service customers, along with all other regional utilities' cost-of-service customers, are indirectly creating the opportunity for NLDA customers to purchase power on the wholesale market at what are currently low market prices. Even if CUB's theories were correct in an economic sense, CUB has not identified any cost shifts that properly fit within the concept of transition charges in the statute.

Additionally, although CUB asserts that its theory of market imperfections and resulting cost shifts is undisputed, that is incorrect. Calpine Solutions' witness, Kevin Higgins, specifically responded to CUB's testimony, asserting that he did not agree with CUB's assertions that cost-of-service customers are subsidizing direct access customers. Calpine Solutions/300, Higgins/14-16. There is no subsidy because PGE does not acquire generation resources to serve the LTDA customers. *Id.* at 14-15. Similarly, PGE has not acquired resources to serve the NLDA customers, even though such customers will nevertheless pay a 20-percent fixed generation charge to PGE for five years. While market prices available to direct access customers are currently lower than in the past, that is not evidence of a cost shift from PGE's cost-of-service customers to NLDA customers. *Id.* at 15. Similarly, if capacity became scarce and PGE were able to charge a premium price to sell its excess energy in the market, an NLDA customer purchasing such energy at a high price in the market could not credibly argue that costs were being shifted from it to cost-of-service customers. Instead, such profits would flow through to reduce rates for cost-of-service customers.

PGE further asserts that the Commission should approve the RAD in the absence of knowing the extent of the charge – arguing it would be appropriate for the Commission to "acknowledge that the RAD is the appropriate mechanism for ensuring resource adequacy in

implementing the NLDA program and PGE's proposed methodology is fair, just, and reasonable." *PGE's Op. Br.* at 14. The problem with this argument is that the Commission must approve rates based on the record in the proceeding. PGE bears the burden of proving its rates and charges are just and reasonable, and it has failed to do so in this proceeding. The Commission cannot determine PGE's proposed charge is just and reasonable without even having a general sense of what that charge might be. Furthermore, there is no way to know that the RAD is the best mechanism to address resource adequacy before any other mechanism has even been considered.

PGE further argues that the RAD is necessary because it is not practical to require ESSs to supply capacity under the direct access laws. *PGE's Op. Br.* at 20. According to PGE, only PGE is "in the unique position to enable delivery of both centralized and distributed capacity at the lowest cost." *Id.* Again, there is no record evidence supporting these assertions because these are issues to be addressed in a generic docket, Docket No. UM 2024.

Finally, PGE continues to attack Calpine Solutions and mischaracterize its procurement practices in its opening brief as a basis to somehow support PGE's RAD charge. *See PGE Op. Br*. at 6. This issue was fully addressed in Calpine Solutions' opening brief and does not merit further response. *See Calpine Solutions' Op. Br.* at 13-14.

In sum, the record is insufficient to support approval of PGE's proposed RAD charge in this proceeding.

**3. Other NLDA program features mitigate the risks PGE identifies**

As explained in Calpine Solutions' opening brief, the Commission intentionally designed program features to address the potential risks PGE identifies, and there is no basis to assume

these features are inadequate pending further investigation of resource adequacy. *See Calpine Solutions' Op. Br.* at 14-15. The Commission already placed significant limitations on the NLDA program for large loads over 10 aMW – including the 119 aMW program cap, 20-percent fixed generation charge, and return-to-cost-of-service charge – at the urging of PGE during the rulemaking. PGE fails to explain why these existing limitations are insufficient to allow the program to move forward without the RAD during pendency of Docket No. UM 2024. Thus, the Commission should reject PGE's alternative proposal to delay implementation of the NLDA program pending the outcome of Docket No. UM 2024. It is unreasonable to suggest the program must be stalled altogether while resource adequacy is further investigated after the Commission already adopted the protections for which PGE advocated in AR 614.

**4. In the alternative, if the Commission allows the RAD charge, the charge should be eliminated for customers who opt into an NLDA-specific curtailment program**

Although there is no basis to approve the RAD charge, Calpine Solutions recommends that if the Commission were to approve the RAD charge, the Commission should also require PGE to offer an NLDA-specific load curtailment program to eliminate the charge for willing NDLA customers. *See Calpine Solutions' Op. Br.* at 16-19. PGE continues to unreasonably refuse to agree to implement such an option.

PGE first asserts NLDA customers should only be allowed to participate in PGE's demand response programs if PGE plans for the capacity needs of such NLDA customers. *PGE's Op. Br.* at 18. But the point of Calpine Solutions' proposal is to obviate the need for PGE to plan for such NLDA customers, to the extent such a need could be perceived to otherwise exist. PGE's argument answers the wrong question.

Next, PGE asserts that an NLDA-specific curtailment program would be discriminatory, but this argument too is misplaced. *See PGE's Op. Br.* at 19. This argument hinges on PGE's claim that it would be unfair to allow NLDA customers to, in effect, receive significantly higher curtailment payments than are currently available under Schedule 26 because "NLDA customers make no greater contribution to system capacity needs." *Id.* at 19. As Calpine Solutions explained in its response to the bench request, Schedule 26 is not even available to direct access customers, yet no one has argued that the current program is improperly discriminatory on those grounds. Adopting a load curtailment program that is tailored to NLDA service would not be discriminatory to Schedule 26 participants because such a program would address a fundamentally different issue than does Schedule 26. An NLDA-specific curtailment program would be targeted to the specific problem that PGE claims could occur due to resource adequacy concerns, namely, the possibility that, for some reason, an NLDA customer's power supply becomes unavailable. In contrast, Schedule 26 is targeted to PGE's capacity supply.

PGE also continues to assert that curtailing NLDA customers in times of material supply interruption would be operationally infeasible. *PGE's Op. Br.* at 19. However, given the unreasonableness of PGE's other positions and PGE's obvious desire to make NLDA customers permanent capacity customers of PGE, it is difficult to accept PGE's assertions as anything other than a self-serving justification for PGE's preferred result. The Commission should require more than PGE's bare assertions. Calpine Solutions acknowledges that it would take enhanced communications between the ESS and PGE to implement such a program, but that does not mean it is completely infeasible.

PGE further points to its Rules C and N to justify its refusal to offer an NLDA-specific curtailment program to willing customers. *PGE's Op. Br.* at 21. However, Rules C and N pose no problem for a load curtailment program in Schedule 26. That is because participating customers have opted into a program to be interruptible customers. The same would be true under the proposed NLDA-specific curtailment program. Calpine Solutions merely recommends a program analogous to Schedule 26 that would apply curtailments to NLDA customers who have opted to be, in effect, interruptible customers.

At the minimum, if the Commission determines to implement the RAD charge pending the outcome of Docket No. UM 2024, the Commission should require PGE to offer a load curtailment program to NLDA customers that is reasonably tailored to address capacity costs such customers impose.

**B. The Commission Should Reject PGE's RIC Charge**

PGE's RIC charge should not be approved because it addresses a matter within the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC") and is not just and reasonable in any event.

With respect to the jurisdictional issue, PGE incorrectly asserts that the Commission has jurisdiction to implement the RIC because PGE's OPUC-approved Rule K "governs ESS scheduling requirements." *PGE's Op. Br.* at 22. This argument is without merit. Whatever Rule K might state cannot overcome the limitations on the Commission's jurisdiction. PGE cannot expand the Commission's jurisdiction by adding new provisions and rates to Rule K. Additionally, as AWEC explained, Rule K does not specify any rates an ESS or its customers pay and, as PGE conceded, the RIC is a rate. *AWEC Op. Br.* at 15. Consistent with the fact that

FERC has jurisdiction over imbalance charges, Rule K does not currently attempt to assess any such rates to ESSs.

In sum, PGE has not demonstrated the Commission has jurisdiction to approve the RIC charge, and even if such jurisdiction existed the charge is not just and reasonable as proposed in this proceeding.

### C. The Commission Should Reject PGE's Long-Term Energy Option and Limit the PGE-Offered Options to the Index-Based Daily Market Energy Option

Calpine Solutions demonstrated in its opening brief that the Commission should instruct PGE to use a standard offer analogous to PacifiCorp's Schedule 293. *Calpine Solutions' Op. Br.* at 24-30. In its opening brief, PGE continues to incorrectly assert that the Long-Term Market Energy Option is not a special product offering and raises no concerns for the competitive retail market. PGE asserts that its Long-Term Market Energy Option "does not allow it to negotiate rates with customers or create specialized products." *PGE's Op. Br.* at 26. But this assertion is nothing more than a convenient litigating position. PGE's proposed Schedule 689 imposes no limitations on PGE's ability to negotiate a specialized product, including a product that has its price fixed for any length of time or a product that includes specified resources or more renewable energy than required by law. PGE's proposal is unquestionably a special contract offering, and the Commission should not approve it.

PGE's opening brief did not address the remaining points raised by Calpine Solutions with respect to PGE's standard offer option, and therefore Calpine Solutions refers the Commission to its opening brief on those points.

### D. The Commission Should Adopt Calpine Solutions' Reasonable Logistical Proposals For PGE's Program

Calpine Solutions has proposed several clarifications to facilitate management of the queue and the prevent unintended harm to customers attempting to participate in PGE's NLDA program. Those proposals included: (i) Measurement of space remaining under the 119-aMW program cap should be based on the customer's binding financial commitment to distribution facilities; (ii) Customers should not be excluded from the NLDA program due to use of PGE-supplied start-up energy after construction is complete; (iii) Customers should not be disqualified from the NLDA program for beginning normal operations after the one-year anniversary of the Commission's administrative rules; and (iv) the Commission should review PGE's NLDA Opt-Out Agreement. No party has substantively addressed these topics in their opening briefs, and therefore Calpine Solutions refers the Commission to its opening brief on these points.

## CONCLUSION

For the reasons explained above, Calpine Solutions recommends that the Commission approve PGE's Schedule 689 with the modifications proposed in Calpine Solutions' opening brief.

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