BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

UE 358

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

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INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its opening brief in this proceeding. Calpine Solutions supports the Public Utility Commission of Oregon's ("Commission" or "OPUC") efforts to expand retail choice opportunities consistent with Oregon's direct access law. This proceeding presents an opportunity for the Commission to make a workable New Load Direct Access ("NLDA") program available to customers seeking to locate in Portland General Electric Company's ("PGE") service territory.

Calpine Solutions makes the following recommendations for resolution of the disputed issues in this proceeding:

- The Commission should reject both the Resource Adequacy Charge and the Resource Intermittency Charge. 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.

BACKGROUND

Initially enacted in 1999, Oregon's direct access law instructs the Commission to develop policies to "eliminate barriers to the development of a competitive retail market structure[.]" ORS 757.646(1). In its findings supporting the legislation, the legislative assembly declared 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. The direct access law requires that all nonresidential retail customers be allowed direct access to competitive markets by purchasing generation services from a Commission-certified ESS. ORS 757.600(6), (16), 757.601(1), 757.649(1)(a).

This proceeding is the culmination of a process that began over two years ago to develop a direct access program specifically designed for new loads that are anticipated to have a smaller impact on the incumbent utility's fixed system costs than existing customers leaving the utility's generation supply. The process started in Docket No. UM 1837 and progressed into a rulemaking proceeding, Docket No. AR 614. *See In Re Rulemaking Related to New Large Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 at 1 (Sept. 14, 2018). First, the Commission concluded that it "has the authority to develop a direct access program focused on new load, and that it is was possible to create such a program without undue cost shifts." *Id.* Following workshops, the rulemaking was opened on May 22, 2018. The first phase of the rulemaking was intended to focus on new loads that exceed 10 average megawatts ("aMW"). *Id.* The second phase would address new direct access loads below 10 aMW. *Id.*

On September 14, 2018, the Commission promulgated new administrative rules resolving issues in the first phase by requiring electric companies to offer a direct access program specifically designed for new loads expected to be in excess of 10 aMW. *Id.* (promulgating OAR 860-038-0700 to 860-038-0760). The rules included several important protections for cost-of-service customers.

Significantly, even though all parties agreed that the utilities do not plan and procure resources for such large loads and thus no fixed generation costs have been acquired to serve such large customers, the rules required that NLDA customers pay a transition rate equal to 20 percent of the utility's fixed generation costs for five years. *Id.* at 2-3. This charge was justified due to the opportunity costs associated with loss of this load to direct access versus cost-of-service, foregone demand response program opportunities, prior actions that created the possibility of the NLDA program, including "procurement of reserves that, in part, serve the

purposes of facilitating default service, if necessary[,]" and the "inherent risk to the system associated with the NLDA program." *Id.* at 3.

The NLDA rules also include protections to ensure that the NLDA customers do not shift existing cost-of-service load to the program, commit to the program before the utility might acquire generation and capacity resources to serve their load, achieve the program's minimum 10 aMW threshold within three years of energization, and pay a return-to service charge should they move their load to default or cost-of-service tariffs and impose costs on the utility. *Id.* at 3-6. The rules also established a program cap of six percent of the utility's annual weather normalized load, which PGE equates to a total program enrollment of no more than 119 aMW. *Id.* at 7.

The administrative rules became effective immediately upon filing with the Secretary of State on September 18, 2018. Thus, the utilities were technically required to offer the program at the time of effectiveness of such rules, but no deadline was contained in the order itself for such compliance filings.

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, 2019.

In contrast, PGE's NLDA tariff (Schedule 689) 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 material provisions not included in PacifiCorp's tariff and not contained in the administrative rules. These controversial provisions included a proposed Resource Adequacy Charge (referred to as the "RAD"), a Resource Intermittency Charge (referred to as the "RIC"), and a Long-Term Market Energy Option. The parties could not reach

agreement on these and other issues. On April 15, 2019, PGE opened a non-binding customer enrollment queue for prospective NLDA customers pending the outcome of this proceeding. The Commission accepted written testimony and held an evidentiary hearing on disputed issues. The procedural schedule calls for a final order by January 6, 2020, and customers in the queue must provide binding commitment to the program by February 14, 2020.

LEGAL STANDARD

When the Commission sets rates for a public utility, it is performing a quasi-legislative function. *Gearhart v. Pub. Util. Commn. of Or.*, 356 Or 216, 221, 339 P3d 904 (2014). 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)). The Commission "'may not authorize a rate or schedule of rates that is not fair, just and reasonable.'" *Id.* (quoting ORS 757.210(1)(a)). Thus, PGE must prove the NLDA rates in this proceeding are just and reasonable, and the Commission should ensure the program provides eligible customers with a meaningful opportunity to access competitive retail markets.

ARGUMENT

As PGE's testimony demonstrates, there is substantial customer interest in this program. The queue is currently oversubscribed by a substantial amount, and eligible customers are interested in locating and expanding their business in Oregon due to this unique program offering. However, PGE proposes radical changes to direct access in Oregon through unsubstantiated and unlawful proposals for the NLDA program, which would impede access to the competitive supply for eligible customers. The Commission should require that the program be offered without the inclusion of the RAD or the RIC charges, and it should remove other

elements of PGE's program that would frustrate the competitive market and present unreasonable obstacles to customer participation in the program.

A. The Commission Should Reject PGE's RAD Charge

PGE's RAD charge is an unlawful charge designed to force NLDA customers to become permanent *capacity* customers of PGE in an effort to address PGE's concerns about future resource adequacy. As discussed further below, the proposal violates Oregon law by depriving direct access customers of the option to purchase capacity through direct access from an ESS. While Calpine Solutions agrees that resource adequacy is a critically important issue, the recently opened Docket No. 2024 provides an opportunity to examine the issue in a holistic manner that comports with Oregon's direct access law and policy. The Commission should therefore not approve PGE's proposed RAD charge in this proceeding, but should instead allow the issue to be addressed in Docket No. 2024.

1. Background on PGE's RAD charge

According to PGE, the RAD charge is a "capacity charge" intended to recover "the costs associated with the procurement of capacity resources necessary to ensure resource adequacy and provide generation reliability services for NLDA customers." PGE/100, Sims-Tinker/15. In other words, NLDA customers would receive a highly unusual (and expensive) form of direct access service in which they would procure their full energy requirements from ESSs while also having to pay PGE for capacity to support the resource adequacy of the customer's energy purchases. Calpine Solutions/100, Higgins/6. According to PGE's preliminary estimate, the RAD charge could cost as much as $9.00/kW-month. PGE Advice Filing No. 19-02, p. 7. PGE has offered to allow for a reduction to the RAD charge only for NLDA customers who agree to enroll in a load curtailment program designed for cost-of-service customers. *See* PGE's

Response to Bench Request No. 4. However, the extent of the RAD charge itself is still unknown because PGE will only be able to calculate the charge after completing a cost-of-service study in its next general rate case. PGE/200, Sims-Tinker/14; Tr at 25-27. Moreover, although PGE initially described the RAD as a charge for acquisition of *incremental capacity* PGE would acquire for NLDA customers, PGE backed away from that proposal and now appears to suggest the charge would include the embedded costs of PGE's existing resources. Tr at 14-16, 83. Therefore, even if "approved" in this case, the RAD charge could not even be applied until after the conclusion of PGE's next general rate case – likely over a year or more from now.

2. PGE's RAD charge violates the direct access law

Oregon's direct access law precludes approval of PGE's RAD charge as proposed in this proceeding. The general construct of Oregon's direct access law allows eligible customers to "'opt out' of purchasing electricity" from their distribution utility and "instead, purchase electricity directly from a certified electricity service supplier, using [their distribution utility]'s distribution system." *Calpine Energy Solutions*, 298 Or App at 147. The law specifically requires: "All retail electricity consumers of an electric company, other than residential electricity consumers, shall be allowed direct access beginning on March 1, 2002." ORS 757.601(1). The law defines "direct access" as "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) (emphasis added).[1] It further defines "electricity" to mean "electric energy, measured in kilowatt-hours, or *electric capacity*, measured in kilowatts, or *both*." ORS 757.600(14) (emphasis added). In other words, the law requires that non-residential customers be allowed to purchase "electric energy . . . or electric capacity . . . or both" from the market through direct access. *Id.*

In contravention of the plain words of the statute, PGE proposes that all NLDA customers (and eventually all other classes of direct access customers) must purchase capacity from PGE. The section of PGE's opening testimony introducing the RAD (and the RIC) is titled: "Capacity Charges within PGE's NLDA Tariff Filing." PGE/100, Sims-Tinker/10. PGE rejects the notion that customers should be permitted to choose to purchase all or some capacity from ESSs. Rather, PGE states that it has determined that "securing capacity on behalf of NLDA customers and charging those customers a non-discriminatory capacity charge is in the public interest and most aligned with Commission policy and Oregon law." PGE/200, Sims-Tinker/24; *see also* Tr at 48 ("Our position is that the RAD is a capacity charge that is applicable to all customers for the purpose of reliability or resource adequacy."). Under this proposed arrangement, the NLDA customer would be required to purchase capacity from PGE on a permanent basis irrespective of whether the customer ever desired to switch to cost-of-service power supply. Calpine Solutions/100, Higgins/7.

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[1] The statute defines "ancillary services" as the "services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, load shaping, reactive power, voltage control and energy balancing services." ORS 757.600(2). That definition does not include the capacity services PGE contemplates under the RAD charge, and therefore provides no additional basis for approval of PGE's RAD charge.

Furthermore, direct access customers are already subject to capacity scarcity pricing when they buy power at market prices from an ESS. As Kevin Higgins testified at the hearing, "in times of capacity scarcity – and I believe this is a point Mr. Sims made that I agree with – one would expect the market price of power to start to reflect that scarcity in the pricing." Tr at 126. Thus, if the market is indeed moving into a time when capacity may be scarcer, direct access customers "would be paying this capacity charge [the RAD] while simultaneously being subject to capacity pricing risk in the marketplace." *Id.* This is a "radical change in the structure of Direct Access in Oregon[.]" Tr at 127.

The Commission cannot lawfully approve the RAD as proposed by PGE because it deprives direct access customers a reasonable opportunity to purchase capacity from ESSs through direct access. As a matter of law, therefore, PGE's lead proposal cannot be adopted.

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

In addition to being unlawful, PGE's proposed RAD charge is premature. Until such time as the Commission defines the resource adequacy goals it seeks to accomplish, it is not possible to reasonably develop a resource adequacy requirement for ESSs or to develop a just and reasonable capacity charge to be assessed to direct access customers that choose to obtain such a product from PGE instead of an ESS. The Commission should first establish its resource adequacy goals and define the requirements before attempting to evaluate how best to achieve those objectives, through PGE-supplied, ESS-supplied, or even customer-supplied products and services. *See* Tr at 130-32.

No party has objected to the Commission investigating the resource adequacy issue. Calpine Solutions has repeatedly expressed willingness to participate in an investigation of the issue. The partial stipulation in PGE's last rate case specifically committed the parties to

investigating direct access issues. *In Re Portland Gen. Elec., General Rate Revision*, Docket No. UE 335, Order No. 19-129, 19 (April 12, 2019) (stating, "We emphasize that the stipulating parties have agreed to review and investigate direct access issues over the next two years."). Docket No. UM 2024 has been opened for that purpose, and resource adequacy as it relates to direct access should be investigated there. Other states offering customers direct access have authorized mechanisms by which competitive suppliers support the resource adequacy of the balancing authority. *See, e.g.,* AWEC/200, Mullins/9-10 (discussing Nevada's resource adequacy requirements). PGE identifies no states where the incumbent utility has been found to be the sole entity capable for supplying resource adequacy to direct access customers, and it is unlikely that would be the conclusion were the OPUC to investigate the issue. Instead, PGE proposes an extreme resource adequacy solution before the resource adequacy topic has received any serious scrutiny and evaluation by the Commission.

The final magnitude and extent of PGE's RAD charge is not even yet known because PGE also proposed the charge before completing the necessary cost-of-service study to support PGE's own proposal. For that reason, PGE could not even assess such a charge to any customers until after completion of a PGE's next general rate case. It is not even clear what there is for the Commission to approve at this time. Under these circumstances, the record is simply insufficient to approve PGE's proposed RAD charge as just and reasonable.

There is also no reliability evidence supporting the need for the charge at this time. In the narrative in Advice Filing No. 19-02, PGE portrays the RAD charge as representing "the operational costs of securing a Customer's capacity should they return to Company energy supply." PGE Advice Filing No. 19-02, proposed Tariff Sheet 689-3. In other words, the RAD charge was conceived to be a very expensive "insurance policy" in which NLDA customers

would be required to make advance payments to PGE for the *assumed* costs of capacity the NLDA customer would need if the customer were to switch from direct access service to PGE-supplied service at some point in the future. Calpine Solutions/100, Higgins/7. But none of PGE's long-term opt-out customers have ever returned to cost-of-service rates, even though the program has been in place since 2003. *Id.* at 8. PGE appears to propose to overbuild its system for a need that has not materialized to date and for which there is no basis to presume will exist in the future.

PGE also points to ESSs' current use of power supply contracts as the basis to assume an inherent risk and need for a RAD charge. PGE claims it is unreasonable to rely upon commonly used power supply agreements with liquidated damages penalties, as opposed to relying upon owned or contracted-for physical generating resources. However, other regions with direct access programs that have investigated resource adequacy have in fact allowed for the use of liquidated damages energy contracts to support resource adequacy needs. During pendency of this proceeding, the California Public Utilities Commission ("CPUC") revisited the question and again concluded that liquidated damages energy contracts sourced from outside the balancing authority of the load in question, and meeting other defined delivery requirements, are permitted in support of the California Independent System Operator's ("CAISO") resource adequacy needs. *Order Instituting Rulemaking to Oversee Resource Adequacy Program*, CPUC Decision 19-10-021, Rulemaking 17-09-020, 2019 CAL PUC LEXIS 636 at **9-27 (Oct. 10, 2019). There is no basis to conclude that the OPUC would not reach a similar conclusion if it were to develop its own resource adequacy requirements.

Further, the record demonstrates that regional utilities are relying on short-term market transactions to support large increments of load, undermining PGE's claim that the practice is

imprudent. Puget Sound Energy's most recent Integrated Resource Plan ("IRP") states, "PSE relies heavily on the short-term market to meet the energy and capacity needs of our customers." Tr at 19, 21-24 (quoting AWEC/303 at 9). The record also contains the executive summary of PacifiCorp's 2017 IRP, which demonstrates PacifiCorp's heavy reliance on short-term energy purchases (referred by PacifiCorp as "front office transactions"). AWEC/304 at 3. PacifiCorp's IRP identified such front office transactions as a "New Resource" supplying 500 MW to 1,539 MW of summer capacity, and 281 MW to 766 MW of winter capacity, to overcome what would otherwise be a capacity shortfall over the planning horizon, which is displayed in the excerpt from Table 1.1 of PacifiCorp's IRP below:

Table 1.1 – 2017 IRP Preferred Portfolio Summary (Nameplate MW)[2]

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
New Resources																				
Summer FOT	500	521	878	807	799	916	844	885	1,042	978	1,040	1,575	1,575	1,566	1,575	1,575	1,575	1,575	1,575	1,539
Winter FOT	281	332	273	307	319	308	306	287	348	351	297	412	551	516	490	451	437	477	479	766

It is well known that PGE itself historically relied upon such liquidated damages products to serve its retail load. *See Re Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584, at 21 (May 31, 2005) (explaining, "PGE considers it appropriate to use expected wholesale power market prices to determine avoided costs for its system due to PGE's significant market purchases. . . . . paying market prices to QFs equates to PGE purchasing power on the market, which is consistent with its current operations").

PGE's own discovery responses, as clarified at the hearing, demonstrate PGE still appears to rely on short-term energy purchases. Tr at 63-73. PGE admits it does "use market

[2] AWEC/304 at 3.

contracts to balance our system and provide for some proportion of load[.]" Tr at 70. Yet, despite PGE's arguments regarding the importance of the not relying heavily on such short-term contracts to serve load, PGE does not even keep track of how much of the 9,000,000 MWh of wholesale purchases it has made on an annual basis in recent years were used to serve its own annual retail load of approximately 19,000,000 MWh, as opposed for other purposes. Tr at 67-70. PGE's incomplete responses to data requests and questioning at the hearing fail to substantiate that PGE possesses long-term contracted or owned capacity to meet its peak hour needs without any reliance on the short-term market. Tr at 70-73 (discussing Calpine Solutions/404). Instead, despite repeated data requests, PGE supplied only data regarding its committed resources that relies on intermittent resources that may or may not be available at the peak load time. *Id.* From the data PGE supplied, the Commission cannot conclude that PGE serves less load with liquidated damages energy contracts at peak periods than the amount of load ESSs may serve with such contracts.

Additionally, at the present time, PGE's own IRP demonstrates PGE does not have a long-term commitment of power supply from specified resources to serve all of its own projected load beyond 2021. Tr at 62-64. Although PGE has plans to acquire additional long-term resources in the future after acknowledgement of its recently submitted IRP, there is no basis to assume ESSs could not also do so if the Commission directed that such a course of action was required to ensure resource adequacy and avoid the RAD.

Furthermore, PGE has consistently mischaracterized the evidence of Calpine Solutions' practices to justify PGE's proposal here. Despite PGE's suggestions that ESSs wait until the day ahead of delivery to secure power for direct access load, the record evidence explains that Calpine Solutions currently contracts

. Conf Tr at 56-60. Furthermore, despite PGE's suggestion that Calpine Solutions' supply of energy from liquidated damages contracts has regularly been curtailed, the record indicates that

. Conf Tr at 60-61. PGE agrees that Calpine Solutions has not violated any Commission order or rule in its practices. Tr at 53.

In effect, PGE has announced its own subjective view of what is necessary for resource adequacy and then, prior to any of its competitors having the knowledge necessary to even attempt to provide that service, asks the Commission to determine PGE must be the only party capable of providing that service. The Commission should not accept PGE's arguments.

4. Other NLDA program features mitigate the risks PGE identifies

PGE justifies the RAD charge by asserting direct access customers rely on PGE as the provider of last resort, but numerous features of the NLDA program were already adopted to mitigate the potential risks PGE identifies. As noted above, the NLDA rules require that NLDA customers pay a transition rate equal to 20 percent of the utility's fixed generation costs for five years. OAR 860-038-0740(3)(a). The Commission approved this transition charge to account for, among other considerations, the utility's "procurement of reserves that, in part, serve the purposes of facilitating default service, if necessary[]" and the "inherent risk to the system associated with the NLDA program." *In Re Rulemaking Related to New Large Load Direct Access Program*, Order No. 18-341 at 3. PGE's RAD charge duplicates recovery for this purpose without any record evidence supporting the conclusion that the 20-percent charge is

inadequate. *See* Calpine Solutions/100, Higgins/19 ("Until a generic docket into resource adequacy can be completed, I propose that the payment of the 20% fixed generation charge should be considered as compensating PGE for the capacity it claims to be providing in support of energy imbalance service."). The NLDA rules also include a program cap of 119 aMW in the case of PGE and a return-to-cost-of-service charge, which further limit the extent of any resource adequacy risks introduced by the program. Any fair reading of the order creating the NLDA rules supports a conclusion that the Commission anticipated the types or risks at issue and adopted program features that mitigated such risks until the issues could be better understood and refined.

5. PGE's proposal to modify Integrated Resource Planning Guideline 9 is misplaced

Recognizing that its RAD charge contradicts long-standing Commission policy, PGE also asks the Commission to revise its integrated resource planning guidelines ("IRP Guidelines"). *See* PGE/100, Sims-Tinker/7-8. Specifically, IRP Guideline 9 requires PGE and PacifiCorp to exclude loads committed to long-term direct access (or the "LTDA program") from PGE's long-term resource planning. The Commission concluded that customers in PGE's LTDA program are "'effectively committed to service' under direct access" and should be excluded from the utility's planning until they provide notice to return to cost-of-service rates. *In the Matter of Pub. Util. Comm'n of Or.: Investigation Into Integrated Resource Planning*, Docket No. 1056, Order No. 07-002, at 19 (Jan. 8, 2007). Under the requirements of PGE's LTDA program, such customers must provide two or three years' advance notice (depending on enrollment year) before returning to PGE's cost-of-service supply. And as noted above, none of these customers have ever returned to cost of service rates. Thus, it is reasonable that PGE should not plan to acquire generation resources for such customers.

PGE's compliance filing with the new NLDA rules is not the appropriate forum for wholesale reversal of long-standing Commission policy in the IRP Guidelines that would apply to non-parties to this proceeding. The reasoning PGE supplies for amending Guideline 9 is not limited to the NLDA program. Instead, PGE argues that the region is generally facing impending resource adequacy shortages and the amount of load enrolled in the existing LTDA program is larger than when Guideline 9 was created in 2007. PGE/100, Sims-Tinker/8. If the Commission were to accept PGE's arguments, there is no apparent reason why the same changes would not also apply equally to the LTDA customers. For that matter, PGE's proposal to amend Guideline 9 would also impose an affirmative obligation upon PacifiCorp to begin planning to serve capacity to all customers enrolled in its LTDA and NLDA programs. But none of those affected parties – including PGE's LTDA customers, PacifiCorp, and PacifiCorp's LTDA and NLDA customers – are participating in this proceeding, which regards only PGE's NLDA program. Revision of Guideline 9 could properly occur only in a proceeding where these parties have full notice and opportunity to present their views, such as Docket No. UM 2024.

In sum, PGE's RAD charge contradicts the Commission's IRP Guideline 9, and PGE has not established that it would be appropriate for the Commission to amend Guideline 9 in this proceeding.

6. 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

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. In the event that NLDA customers are subject to an interim RAD

charge while a generic investigation into resource adequacy is conducted, Calpine Solutions' has proposed that PGE should develop an NLDA-specific demand response proposal. *See* Calpine Solutions/300, Higgins/4-7. Such a load curtailment program would allow NLDA customers to avoid these charges if they are willing to take the risk of curtailment in the event that their ESS's supply is curtailed in material part. *Id.*

Calpine Solutions' proposal for an interim curtailment program for NLDA customers is reasonable and narrowly targeted to the issues PGE raises with its RAD charge. *See* Tr at 134-35. PGE would curtail such customer when its supply from the ESS was disrupted in material amounts and at times of capacity constraint. While developing such a program would require a certain amount of real-time communication between the ESS and PGE, *id.*, the program could be designed to address the concern raised by PGE – namely, that the NLDA customer would be curtailed when the supply to its ESS is curtailed, thus relieving PGE of the obligation to supply such power or hold capacity for that purpose. It would also require the NLDA customer to agree to curtailment of its load on very short notice, and it would therefore not be a workable solution for all customers. However, if the RAD were approved pending the outcome of the investigation into resource adequacy, the curtailment program would further mitigate the impact of the potential risks that PGE identifies and would justify relieving such NLDA customers of the RAD charge.

PGE's position has changed on this topic throughout the proceeding. Early on, PGE appeared to be resistant to an NLDA-specific curtailment process. Staff/102, Gibbens/4 (Response to AWEC Data Request No. 18). Then, PGE's last round of testimony suggested PGE may agree to a demand response program tailored for NLDA customers as proposed by Calpine Solutions. PGE testified, "Following additional direction from the Commission, PGE

would consider demand response program design recommendations in a subsequent NLDA compliance or demand response tariff filing." PGE/300, Sims-Tinker/9:17 -/10:4. Yet upon further inquiry by the Commission through the bench request, PGE clarified that it will not agree to tailor a demand response program to the parameters of the NLDA program. PGE's final proposal is to merely allow NLDA customers to participate in PGE's existing Schedule 26 program without any meaningful design changes for the unique circumstances of the NLDA customers. *See* PGE's Response to Bench Request No. 4. PGE's position is unreasonable.

PGE's proposal would expose the NLDA customer to curtailments that are not related to the problem the RAD is designed to solve. Schedule 26 is a demand response program designed to reduce PGE's supply needs from its bundled power supply portfolio by providing large non-residential customers incentives for reducing a committed amount of load at the request of PGE. *See* Tr at 135-36. Thus, PGE proposes to curtail NLDA customers "due to [PGE]'s own supply management circumstances . . . . whereas the problem that's been identified is . . . the resource adequacy associated with the New Load Direct Access customer[.]" *Id*. It makes little sense to interrupt an NLDA customer as part of PGE's Schedule 26 program if the NLDA customer's own supply is not impaired. *Id.* at 136. PGE has provided no evidence or explanation to conclude that the supply interruption events that PGE is likely to request under Schedule 26 are likely to coincide with the ESSs' supply interruption events that PGE asserts will impose costs on PGE. Under PGE's proposal, the NLDA customer could be curtailed in an hour when its ESS is perfectly capable of supplying power to PGE's distribution system for delivery to the customer. That is punitive and makes no sense.

Therefore, if the Commission determines to implement the RAD charge, it should require that PGE implement a load curtailment program specifically tailored for NLDA customers to allow such customers to elect to avoid the RAD charge.

B. The Commission Should Reject PGE's RIC Charge

PGE's RIC charge should not be approved for numerous reasons. The proposed RIC charge is a transmission-based cost that is subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC"), and can therefore be lawfully recovered only through PGE's FERC-approved open access transmission tariff ("OATT"). Additionally, as proposed here, the charge has fatal design flaws that preclude it from being found just and reasonable by any regulatory agency.

1. Background on PGE's RIC charge

PGE asserts that its RIC charge is intended to recover the capacity costs associated with supplying energy imbalance service to ESSs. Energy imbalance service is an ancillary service that PGE must offer to network transmission customers, including scheduling ESSs, under FERC's open access rules. In Order No. 888, FERC explained energy imbalance service "makes up for any net mismatch over an hour between the scheduled delivery of energy and the actual load that the energy serves in the control area." *Promoting Wholesale Competition through Open Access Transmission*, Order No. 888, 61 Fed Reg 21,540, 21,581 (May 10, 1996).[3] In the case of scheduling ESSs, which are network transmission customers under PGE's OATT, PGE offers energy imbalance service under Schedule 4-R of its OATT.

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[3] Notably, FERC also requires related ancillary services be included in the OATT – "In contrast, Regulation and Frequency Response Service corrects for instantaneous variations between the customer's resources and load, even if over an hour these variations even out and require no net energy to be supplied." *Id.*

FERC reviews and approves PGE's energy imbalance rates under Schedule 4-R. *See, e.g.,* FERC Docket OA07-15. Before joining the CAISO Energy Imbalance Market ("EIM"), PGE's OATT Schedule 4-R contained an increased imbalance rate for ESS deliveries that fell outside of bands of scheduling accuracy. *Id.*; Calpine Solutions/200, Bass/10; Tr at 77. With respect to direct access service under Schedule 4-R, PGE utilized a 10-percent rate increase for imbalances exceeding a 7.5-percent deviation band. Calpine Solutions/200, Bass/10. Notably, due to the recognized difficulty of hourly scheduling of retail loads, PGE's deviation bands were more restrictive for transmission customers scheduling energy outside of the direct access context under Schedule 4, and included an initial band of five percent and a further pricing increase for exceeding a 25-percent deviation band. *Id.* PGE proposed to eliminate the energy imbalance deviation pricing bands from Schedule 4-R when it joined the CAISO EIM, and now uses an-EIM derived charge for such imbalances. *See* FERC Docket No. ER17-1075. FERC approved this change to the imbalance charges in the OATT. *Id.*

Now, PGE complains that it is under-recovering its costs of providing imbalance energy service during events of under-scheduling and asks this Commission to approve the RIC. PGE asserts that the OATT energy imbalance charge is an energy-only product, and the RIC is needed to ensure adequate capacity is available to create the energy needed to supply customer loads. PGE/100, Sims-Tinker/12-13. The RIC charge would apply to all NLDA customers of an ESS in every month where the ESS schedules less power than its aggregate retail load in any single hour of the month. Tr at 81. When that occurs, each individual customer of such ESS will pay a fixed monthly charge based on the customer's peak load, set at $0.58 per on-peak kW. Calpine Solutions/100, Higgins/14-16.

2. PGE's RIC charge is unlawful because FERC has jurisdiction over imbalance service

PGE has not established that this Commission has jurisdiction to approve the RIC. The Federal Power Act grants FERC *exclusive* jurisdiction over transmission in interstate commerce. *See, e.g.,* 16 USC § 824(b). Unbundled retail transmissions – such as the network transmission of the ESS-scheduled power over PGE's system to the ESS's loads and the charges for scheduling imbalances at issue here – are within FERC's transmission jurisdiction even though retail sales themselves are within a state's jurisdiction. *New York v. FERC*, 535 US 1, 16-24 (2002); *see also* Order No. 888, 61 Fed Reg at 21,275 (explaining, "to the extent that retail wheeling involves transmission in interstate commerce by public utilities, the rates, terms and conditions of such service are subject to the exclusive jurisdiction of [FERC], and must be filed with [FERC]"). Because FERC's transmission jurisdiction is *exclusive*, states may not regulate in the field. *Transmission Agency of N. California v. Sierra P. Power Co.*, 295 F3d 918, 928 (9th Cir 2002).[4]

Furthermore, FERC is regulating in the field as part of its open-access transmission rules and has a demonstrated expertise with the subject matter. FERC has specifically recognized the "inherent difficulty" of accurately scheduling to retail loads and approved relaxed deviation bands for retail imbalance charges. *Entergy Services, Inc.,* 93 FERC ¶ 61,156, at 61,525 (Nov. 13, 2000). FERC has explained: "Specifically, retail loads generally do not utilize hourly metering, telecommunications and associated telemetry to monitor their loads. Without these

[4] Indeed, at PGE's urging, this Commission previously determined that it had no jurisdiction over a dispute between PGE and a qualifying facility related to scheduling of the facility's output because it regarded PGE's transmission function. *PáTu Wind Farm, LLC v. Portland General Electric Co.,* Docket No. UM 1566, Order No. 12-316, 8-9 (Aug. 21, 2012), *reh'g denied,* Order No. 14-287 (Aug. 13, 2014).

devices, the necessary data to allow retail suppliers to timely respond and minimize energy imbalances is lacking." *Id.* Those circumstances are present here, where Calpine Solutions does not "have real-time access to PGE's interval metering at the customer's site." Calpine Solutions/200, Bass/9.

Indeed, FERC has previously approved provisions of *PGE's OATT* designed to encourage accurate scheduling to retail loads by ESSs under PGE's Schedule 4-R. *See Portland General Elec. Co.*, 124 FERC ¶ 61,208, at P 5 (Aug. 29, 2008) (approving a PGE proposal "to revise Schedules 4 and 4-R to encourage accurate scheduling"). FERC described the then-existing 7.5-percent bandwidth applicable to ESSs as a mechanism "to encourage accurate scheduling." *Id.* at P 6. As noted above, PGE abandoned that prior regime and now asks this Commission approve the RIC to achieve the objective of encouraging accurate scheduling.

Although PGE suggests the issue of imbalance *capacity* costs is somehow distinct and outside of FERC's jurisdiction, PGE is wrong on that point too. FERC has considered that question and developed criteria it would consider for approving such charges designed to recover the capacity costs associated with providing imbalance service. In Order No. 764, FERC considered adoption of a standardized charge to recover "the costs of capacity held in reserve to provide generator imbalance service." *Integrating Variable Energy Resources*, Order No. 764, 77 Fed Reg 41,482, at P 267 (July 13, 2012). While FERC declined to adopt a standardized charge, it indicated it would continue to evaluate proposals to recover such charges on a case-by-case basis and provided guidelines for such proposals. *Id.* at PP 268-270, 315-335. While Order No. 764 addressed *generator* imbalance service, FERC has also addressed the issue with respect to *energy* imbalance charges at issue here and, in that context, cautioned against designing a capacity component that results in double recovery. *Preventing Undue Discrimination and*

Preference in Transmission Service, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 687-692 (Feb. 16, 2007).[5] If the OPUC were to approve an overlapping imbalance charge for PGE, such as the RIC, such charge would present the risk of double recovery at the state and federal level and be a classic case of the state regulating within FERC's exclusive sphere.

In sum, the Federal Power Act preempts PGE's proposed RIC charge as an OPUC-approved rate because FERC has exclusive jurisdiction over transmission services, including PGE's recovery of costs resulting from ESSs' scheduling imbalances. The Commission should decline to address the substance of PGE's RIC proposal for that reason alone.

3. PGE's RIC charge is not properly designed to achieve its objective

Aside from the jurisdictional problem with PGE's proposal, PGE's RIC has fatal design flaws that preclude its approval. First, the magnitude of the charge is not rationally related to the costs PGE identifies. Because PGE has designed the charge as a monthly, on-peak demand charge, it has no clear nexus to the frequency or extent of actual negative imbalance events with which PGE is concerned. Calpine Solutions/100, Higgins/16-17. Rather, if there is a single hour in a month in which an ESS causes a negative imbalance of any magnitude, the full monthly charge will apply to all of that ESS's NLDA customers based on each customer's individual peak load in the month. *Id*. The charge would be the same to these customers if the ESS under-scheduled by 100 MW in every hour of the month or by just 1 MW in one hour of the month. Tr at 82. As PGE's witnesses essentially agreed at the hearing, the charge requires "perfect

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[5] Energy imbalance charges are imposed on a transmission customer, such as an ESS or the utility's own merchant function, when the amount of energy scheduled for delivery to the transmission grid does not equal the amount of energy withdrawn from the grid for that customer's use, such as in the case of an ESS scheduling to its retail customer load. *Id.* at P 71 n. 66. In contrast, generator imbalance charges are levied on *generators* for deviations between the amount of energy they schedule for delivery by the transmission provider on their behalf and the amount the generator actually delivers to the grid. *Id.*

schedules to actuals" and would therefore be likely to apply to every ESS in every month. *Id.* at 82-83. It would not incentivize or promote more accurate scheduling.

Further, there is no reasonable basis to apply an imbalance charge to the NLDA customer rather than to the ESS that schedules the power. *See* Calpine Solutions/100, Higgins/16-17. Under PGE's proposal, the customer could be penalized solely for the scheduling deviations of the ESS at its total portfolio of customer load. If a capacity imbalance charge were to be assessed, it should be levied on the scheduling ESSs, not the end-use customers.

Moreover, as proposed in this case, the RIC would be a duplicative charge if customers were also subject to PGE's proposed RAD charge. Calpine Solutions/100, Higgins/17-18. If NLDA customers must fund significant amounts of "contingent" capacity through the RAD charge, there is no basis to also require such customers to pay the RIC for capacity associated with negative energy imbalances. Calpine Solutions/300, Higgins/10.

Finally, Calpine Solutions has proposed to support a return to the banded imbalance charges in the OATT to address any legitimate cost concerns PGE may have with hourly scheduling deviations. *Id.* at 9. PGE has failed to explain why this potential outcome is inadequate, and it is not clear why PGE continues to insist the OPUC address this issue, which is clearly beyond its jurisdiction. The Commission should reject the RIC charge.

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

The Commission should reject PGE's proposed Long-Term Energy Option and require that the standard offer NLDA program be limited to a daily market index price. If the Commission shares PGE's concerns regarding the costs of complying with the Renewable Portfolio Standard ("RPS") for standard offer customers, PGE's Daily Market Energy Option should include bilaterally procured energy for the *RPS portion* (i.e., at present time 15 percent)

of the customers' supply, subject to several protections discussed below. Additionally, participation in the standard offer should not count towards the 119-aMW program cap in PGE's NLDA program.

1. Background on PGE's Long-Term Energy Option

The Commission's administrative rules for the NLDA standard offer generally state that the same administrative rules regarding the nonresidential standard offer rate in the other direct access programs, OAR 860-038-0250, will apply to the NLDA program. OAR 860-038-0720(1). Thus, under the rules, the same standard offer option from the LTDA program is contemplated for use in the NLDA program.

While PGE included a Daily Market Energy Option analogous to the LTDA's index-based standard offer service, PGE's Schedule 689 also proposes the novel Long-Term Energy Option. *See* PGE/100, Sims-Tinker/19-20. This Long-Term Energy Option is distinct from all prior standard offers in direct access programs because PGE will act as an ESS to procure the specific energy product requested by the customer. While PGE states that no cost-of-service assets will be offered to customers (aside from those needed for ancillary services under the OATT), it is apparent that the Company is proposing to sell a specialized energy product with unique pricing. *Id.* The pricing and terms of the service would be controlled by an individualized contract between PGE and the energy supplier. *Id.* PGE proposes that the Long-Term Energy Option "is PGE's standard offer service for the NLDA program." PGE/100, Sims-Tinker/19; *see also* PGE Advice Filing No. 19-02, proposed Tariff Sheet 689-5. Additionally, unlike how PacifiCorp has treated its index-based standard offer in its NLDA program, PGE proposes that participation in PGE's Long-Term Energy Option or the Daily Market Energy

Option will count towards the limited program cap of 119 aMW. PGE Advice Filing No. 19-02, proposed Tariff Sheet 689-4.

2. The Long-Term Energy Option should not be permitted because it would harm the competitive retail market

The Commission should not allow PGE to use the PGE-supplied standard offer option in this program to make a special product offering to NLDA customers. Specialized product offerings present significant problems when offered by the incumbent utility in markets with competitive retail access. *See* Calpine Solutions/100, Higgins/25-33. Those problems include the risk of "cross subsidization by nonparticipating customers to increase PGE's competitive advantage over ESSs, financial risks to the utility itself which could harm nonparticipating customers due to PGE's actions in a competitive market, and the risk the utility or its employees will be motivated to engage in anticompetitive behavior." *Id.* at 26. For these reasons, ever since implementation of direct access, the Commission's administrative rules have barred new special contracts. OAR 860-038-0260(3).[6] That bar against special product offerings is consistent with the direct access law's requirement that the Commission implement policies to "mitigate the vertical and horizontal market power of incumbent electric companies." ORS 757.646(1).

As proposed by PGE, the Long-Term Energy Option is no different from a special contract because it is a specialized product offering to an individual customer. In contrast to index-based pricing, the Long-Term Energy Option contains no OPUC-approved rate or a publicly available index upon which the prices must be based. Calpine Solutions/100,

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6 The rules define "special contract" as "a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230." OAR 860-038-0001(61).

Higgins/24. The price will be subject to individual negotiation between PGE and the customer, as well as the energy supplier to PGE. It would appear that PGE could offer to supply more renewable energy than required by the RPS, or to supply a long-term fixed-price product that is not available in existing index-based standard offer tariffs – both of which would directly compete with ESS-supplied products that protect other customers from the risks of the PGE making such offerings. Moreover, the risks to the competitive market are more acute than normal in the case of a *new* customer that is necessarily in close contact with PGE to establish its distribution connection. *See id.* at 26 (explaining, "PGE will be in the unique position, as the distribution utility that the customer must contact, of having advanced notice of interest by a customer in locating to the utility's service territory.").

The Commission has already authorized PGE to offer a green tariff with its own protections and parameters, and there is no basis to convert the NLDA program into a PGE-supplied option. During Docket No. UM 1837 and AR 614, PGE proposed, but did not obtain approval of, the right to offer its own special product offerings within the NLDA program. *See* Calpine Solutions/100, Higgins/30-31. Additionally, if PGE wishes to make special product offerings, it has the ability to do so by establishing a non-regulated affiliate that could establish itself as a competitive ESS. *Id.* at 31-32.

Notably, PacifiCorp's NLDA program (Schedule 293) does not include a product analogous to the PGE's proposed Long-Term Energy Option. *See id.* at 32. There is no basis for different treatment for PGE.

The only unique issue PGE has raised is its concern that it cannot recover the RPS costs of a standard offer customer's generation supply because no RPS-based index exists in the region. In response to this concern, Calpine Solutions agrees it would be reasonable to allow

PGE's Daily Market Energy Option to include bilaterally procured energy for the *RPS portion* (i.e., at present time 15 percent) of the customers' supply. Calpine Solutions/300, Higgins/ 12-13. If that is allowed, the Commission should impose at least four conditions to prevent exposure to the risks inherent in special product offerings: (i) the energy must be from an RPS resource not owned or contracted by PGE, and not specified as any particular resource to the customer; (ii) the RPS portion of the pricing cannot be fixed for duration longer than the non-RPS indexed portion in the tariff or customer contract; (iii) PGE's contract with the RPS resource owner as well as PGE's offering to the customer should be subject to review by Staff and stakeholders to ensure there are no special-contract-type abuses; and (iv) PGE should be directed to file to revise the tariff to use an index and eliminate the bilateral procurement of the RPS-portion of supply as soon as an index for bundled and unbundled RECs develops in the Pacific Northwest (as is the case in some other regions). *Id.* These restrictions are narrowly targeted to address the problem PGE identified, which is limited to a lack an index at this time, but at the same time prevent the standard offer to NLDA customers from becoming a special contract or another PGE-offered green tariff.

3. PGE's standard offer should not count towards the limited NLDA program cap

Regardless of whether the Commission allows the Long-Term Energy Option to be offered, the Commission should not allow any standard offer service (including the Long-Term Energy Option and the Daily Market Energy Option) to count towards PGE's 119-aMW NLDA program cap. PacifiCorp's NLDA program – which was approved by the Commission as consistent with the same administrative rules at issue here – does not count participation in the index-based standard offer service towards the NLDA program cap. *See* Calpine Solutions/100, Higgins/32. PGE asserts that the standard offer in its LTDA program counts towards the 300-

aMW cap in that program, but PGE fails to cite any rule or order finding that arrangement reasonable. PGE/200, Sims-Tinker/55. PGE's Schedule 89 provides an index-priced standard offer service that does not contain a program enrollment cap, which is analogous to the standard offer PacifiCorp used for its NLDA program.[7] PGE's proposal would therefore be inconsistent with Commission precedent for PacifiCorp and lead to unequal treatment of the two utility's customers.

There is also inadequate justification for PGE's proposal. PGE argued there should be a cap on NLDA program out of concern that PGE is the provider of last resort, and the cap would limit the potential impact of many customers abruptly returning to PGE-supplied service. Calpine Solutions/100, Higgins/24-25. However, if PGE is already serving the customer with PGE-procured energy, especially in a Long-Term Energy Option, there should be no concern that PGE will be harmed in its capacity as the provider of last resort. *Id.* Additionally, including the standard offer as contributing to the cap will reduce availability in the NLDA program for customers who seek to obtain a direct access product. *Id.* Thus, participation in the standard offer – which should not be designed for long-term use – should not count towards the limited program cap.

4. Conclusion regarding the standard offer options

In sum, the Commission should instruct PGE to use a standard offer analogous to PacifiCorp's Schedule 293. The standard offer should be based on a daily market index price, and if the Commission is concerned with the lack of an RPS index it should only allow bilateral contracting for the RPS-portion of the supply through the Daily Market Energy Option subject to

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[7] Available at: https://www.portlandgeneral.com/our-company/regulatory-documents/tariff.

the conditions set forth above. Additionally, PGE's initial filing indicated that the three-year notice provision and the return-to-service charge apply when the customer switches from Direct Access Service to the Daily Market Energy Option, but do not apply when a customer switches to the Long-Term Energy Option. Calpine Solutions/100, Higgins/22-23. PGE stated in reply testimony that it would revise the final Schedule 689 to require the three-year notice and the payment of the Return to Service Charge. PGE/200, Sims-Tinker/47. The Commission should ensure that PGE modifies the tariff itself to correct these errors. Finally, participation in the standard offer should not count towards the participation cap in the NLDA program.

D. The Commission should adopt Calpine Solutions' reasonable logistical proposals for PGE's program

The Commission should resolve several important logistical details to prevent unintended consequences in the NLDA program. The factors that could lead to adverse and unexpected outcomes at this time include the combined effect of the significant interest in the program, the limited program cap of 119 aMW, the requirement that customers supply one-year advance notice to enroll, and the delay in finalization of the program to which customers would be committed due to this proceeding. Calpine Solutions has proposed several reasonable logistical proposals to reconcile these competing factors.

1. Measurement of space remaining under the 119-aMW program cap should be based on the customer's binding financial commitment to distribution facilities

The parties appear to agree that the customer's financial commitment to construction of distribution facilities should be used for purposes of measuring the customer's level of enrollment and overall participation in the program towards to the 119-aMW program cap, but there is an important clarification remaining to be made. *See* Calpine Solutions/100, Higgins/34-36. PGE still appears to suggest that it might rely on the "design" plans for distribution

planning, as opposed to the binding distribution contract, such as a minimum load agreement, that commits the customer to the costs of building the facilities. PGE/200, Sims-Tinker/52-54. The design plans can change before the customer executes a binding agreement to fund the construction of the relevant distribution facilities. Calpine Solutions/300, Higgins/13-14. Therefore, Calpine Solutions recommends that the Commission require PGE's Schedule 689 to clarify that that PGE will rely on the final, binding distribution agreement committing the customer to construct the distribution upgrades.

2. Customers should not be excluded from the NLDA program due to use of PGE-supplied start-up energy after construction is complete

The Commission should require PGE to allow for use of limited start-up energy under cost-of-service rates, including limited energy use after energization of the facility's meter. This accommodation would prevent unintended consequences where a customer could be excluded from the program if it needs to energize its normal meter for continued start-up activities before a full year expires after its commitment to the NLDA program.

PGE agrees that *construction* power should be allowed under cost-of-service rates, noting that "Schedule 689 is not intended to include construction power before *normal operations* of the new load facility itself." PGE/200, Sims-Tinker/58 (emphasis added). But PGE proposes to disqualify a customer from the NLDA program if the customer continues taking cost-of-service power at any point after initial energization of the meter at the facility after construction. *Id.* at 60-61. PGE appears to assume that normal business operations of the new large load begin the instant the meter is energized.

Calpine Solutions disagrees that energization of the meter is the reasonable point at which the customer's normal operations begin and the point at which the NLDA load should be barred from buying cost-of-service power. *See* Calpine Solutions/100, Higgins/38-39. Rather,

given the agreement that use of construction power should not disqualify a new customer, it would be unreasonable to disqualify the customer from the NLDA program because it had to energize its long-term meter for continued start-up activities before one year expired after its notice to PGE. *Id.* Supplying such start-up energy with cost-of-service energy would not require advance planning by PGE that does not already occur and would not therefore harm other customers. *Id.*

To avoid unintended consequences and logistical problems, Calpine Solutions recommends that the Commission require that the threshold be energization of the meter *and* taking service in excess of 1,000 kW.

3. Customers should not be disqualified from the NLDA program for beginning normal operations after the one-year anniversary of the Commission's administrative rules

Given the unique circumstances for PGE's program at this time, it would be unreasonable to strictly enforce the advance notice requirements for customers that make a binding commitment at the conclusion of this proceeding. *See id.* at 39-41. The Commission's NLDA rules were finalized on September 14, 2018, and customers may have begun making business decisions in reliance on this program at that time without the ability to make any formal commitment to the program due to the contested nature of issues in this proceeding. Under these circumstances, it is not reasonable to exclude customers from the program due to a failure to make a binding commitment to the NLDA program one year prior to energization or prior to a binding commitment for distribution service. *Id.* Those rules are designed for the program after the tariff is finally approved with applicable terms and conditions of service which are available for such a commitment to be made.

Yet PGE proposes to bar customers currently in the queue if such customers energize their meter less than one year after notice to participate in the formal queue was submitted. PGE/200, Sims-Tinker/57. Because PGE did not make the queue available until April 15, 2019, PGE's proposal would exclude customers that expressed written commitment to PGE during the five months between finalization of the administrative rules and the date PGE first offered a formal queue. That is not a reasonable proposal. Such customers may need to energize their facilities more quickly for logistical or business reasons, but that provides no reason to conclude PGE would have planned to serve these customers on a long-term basis.

Rather, Calpine Solutions recommends that any customer that provided written notice of intent to PGE between finalization of the Commission's rules and the date for a final binding commitment at the conclusion of this case (set for February 14, 2020) not be subject to the strict application of advance notice requirements. Calpine Solutions/100, Higgins/41.[8] In other words, new customers commencing service for normal operations after September 14, 2019, should be found to meet the enrollment criteria by making a binding commitment to the NLDA program by the deadline for such commitments for customers in the queue (currently set for February 14, 2020). This proposal would exclude customers from participating only if they energized prior to September 14, 2019.

E. The Commission Should Review PGE's NLDA Opt-Out Agreement

Finally, Calpine Solutions recommends that PGE's form contract for the NLDA program should be subject to stakeholder review and Commission approval. The NLDA customers will be required to execute this contract in order to participate in the program. *See* Calpine

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[8] Under the procedural schedule approved by the Administrative Law Judge, customers must make their binding election by February 14, 2020.

Solutions/100, Higgins/42-43. It is therefore an extension of the tariff itself and it should be subject to Commission and stakeholder review before it is offered to customers.

CONCLUSION

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

DATED: November 14, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 14, 2019, I electronically filed redacted portions of the Opening Brief of Calpine Energy Solutions, LLC with the Public Utility Commission of Oregon's Filing Center and served the confidential portions of the filing to the following qualified parties to Docket No. UE 358 via Priority US Mail, Two-Day Delivery:

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