BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2024

In the Matter of	)	
ALLIANCE OF WESTERN ENERGY CONSUMERS,	)	CLOSING COMMENTS OF THE OREGON CITIZENS' UTILITY BOARD
Petition for Investigation into Long-Term Direct Access Programs.	)	

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OF THE

OREGON CITIZENS' UTILITY BOARD

May 6, 2020

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I. INTRODUCTION

The Oregon Citizens' Utility Board (CUB) submitted comments in March and appreciates this opportunity to respond to the March Comments of other parties. The comments submitted thus far are substantial and helpful to this direct access investigation. CUB appreciates the work conducted by all parties in this proceeding to date. In these Closing Comments, CUB will briefly discuss how Oregon's direct access program compares to other states and explain what we have learned from this process. It is clear that changes to Oregon's direct access program are warranted.

Parties' comments demonstrate that Oregon's version of direct access is unusually generous. Some states have limited direct access, while others require investments in capacity/resource adequacy as a prerequisite for customers to move to direct access. Some states require support for decommissioning coal, nuclear, and hydro facilities, and some require support for state-mandated programs. Few states seem to endorse direct access through an energy-only market combined with no resource adequacy or capacity requirements, limits on stranded cost recovery, and no requirements to support state mandated-programs.

In keeping with the spirit of this investigation, this leads to questioning whether the structure of Oregon's program is reasonable. There is a simple test to see whether Oregon's program is reasonable: think about what our energy grid would look like if residential customers were offered the same generous deal. What would happen if residential customers could purchase energy, but not capacity; could avoid paying for state mandated programs; and could avoid contributions to grid reliability?

The answer is simple: The grid would fail. Much has changed since the passage of SB 1149, and we are building an unsustainable, quasi-deregulated system on top of regulated system. If we keep expanding that deregulated system, without first fixing it, then we will make the entire electric grid unsustainable. This investigation is timely and will hopefully ameliorate some of CUB's concerns and result in a program that is sustainable and fair.

II. OREGON'S DIRECT ACCESS PROGRAM IS MORE GENEROUS THAN OTHER STATES

CUB appreciates the effort of parties to review the status of direct access in other states. This review demonstrates that Oregon's direct access program seems unique in its combined treatment of stranded costs, bypassability of legislatively mandated programs, and lack of resource adequacy/capacity requirements.

First, an open program that generally allows for direct access does not exist is some of the western states surveyed by parties:

- Washington does not have a legislative mandate for direct access. Instead, one utility has made agreements with certain customers to allow for direct access.[1] This program is closed to new participants, which effectively limits the amount of stranded costs transferred from departing customers to cost-of-service customers.[2] The most recent departing company was Microsoft and it was required to pay transitions charges.[3]

- Montana allows for some direct access, but is closed to new participants, which effectively limits the amount of stranded costs transferred from departing customers to cost-of-service customers.[4]

- Nevada must determine whether it is in the public interest for each customer to depart the utility. As part of that test it evaluates whether remaining customers will pay increased costs because of the departing customer. This is done through an individual application process and has resulted in several entities paying substantial exist fees.[5] Nevada amended its law last year restricting customers' ability to leave the system[6] and changes are expected through a rulemaking process.

Second, some states have not adopted Oregon's limits on transition costs associated with resources that are left with cost-of-service customers:

- California does not have a time limited cap for stranded costs, instead departing customers pay these costs until the individual assets are depreciated and contracts

1 UM 2024, AWEC Opening Comments page 21.
2 UM 2024, Calpine Opening Comments, page 9.
3 UM 2024, PacifiCorp Opening Comments, page 10.
4 UM 2024, Calpine Opening Comments, page 9.
5 UM 2025, AWEC Opening Comments page 15.
6 UM 2025, PacifiCorp Opening Comments, page 12.

has finished. California collects stranded costs through a Power Charge Indifference Adjustment.[7]

- Nevada must determine whether it is in the public interest for a customer to depart the utility. As part of that test, it evaluates whether remaining customers will pay increased costs because of the departing customer. This is done through an individual application process and has resulted in several entities paying substantial exist fees to offset the higher costs.[8]

Third, in addition to transition cost, some states require departing customers to pay for decommissioning of generation that is being retired:

- Nevada requires departing customers to pay unrecovered investments related to retiring coal plants, including decommissioning costs.[9]

- California requires departing customers to pay for nuclear decommissioning charge and hydro decommissioning/removal.[10]

Fourth, some states prohibit departing customers from bypassing charges related to legislative-mandated programs:

- California requires direct access customers to pay a set of non-bypassable costs associated with a variety of legislatively mandated programs[11].

- Nevada requires customers leaving the system to pay non-bypassable costs associated with legislative mandated programs including renewable programs.[12]

- Washington's direct access customers must pay their share of costs associated with acquiring all cost-effective energy efficiency.[13] Microsoft was required to comply with the state RPS and other public policy goals.[14]

Fifth, states generally do not allow departing customers to lean on the existing system for resource adequacy:

- California has an independent grid operator and has significant reliability requirements. However, it is worth noting that there is concern that California's reliability requirements are inadequate and reliability could be threatened.

[7] UM 2025, AWEC Opening Comments, page 6.
[8] UM 2025, AWEC Opening Comments page 15.
[9] UM 2025, AWEC Opening Comments, page 16.
[10] UM 2025, OPUC Staff Opening Comments, page 8.
[11] UM 2025, OPUC Staff Opening Comments, page 8.
[12] UM 2025, AWEC Opening Comments, page 16.
[13] UM 2025, AWEC Opening Comments, page 23.
[14] UM 2025, PacifiCorp Opening Comments, page 10.

- Washington does not allow departing customers to come back to cost-of-service rates or lean on the system. The utility has the power to curtail these customers if the capacity is needed for cost-of-service customers.[15]

III. CUB'S TAKEAWAYS

CUB appreciates this process. Through these comments, parties have had a chance to explore some of the issues related to direct access. Here are CUB takeaways from this process thus far.

1. Oregon's direct access program is flawed. The electric grid requires capacity and energy. Allowing some customers to abandon any responsibility to provide capacity and instead simply surf the short-term energy market is unfair and shifts the resource adequacy responsibility to captive residential and small commercial customers that have no other option.

2. Oregon's direct access program should be fixed before consideration is given to expand it. This proceeding should prioritize means to ensure that unwarranted cost shifting does not occur, that direct access will support state-mandated programs, and that all customers—direct access or not—should contribute towards resource adequacy metrics. Suggestions that caps should be removed and smaller commercial customers should be allowed into the program should not be considered until the Commission is assured that there is no unwarranted cost shifting and until the Commission is assured that direct access customers contribute their share to reliability and resource adequacy. Suggestions that resource adequacy requirements should be delayed until there is a regional consensus should be rejected. Expanding direct access without solving for resource adequacy creates economic interests that would benefit from delaying regional consensus.

3. Suggestions that a capacity credit should be given to departing customers should be rejected. Paying departing customers for not investing in capacity is rewarding bad behavior. In addition, it must be recognized that much of the capacity that is being provided back to the utility system is coal capacity. As we have seen from the recent Puget Power sale of Colstrip capacity to Northwestern for $1.00, coal capacity is not valued. In fact, it comes with significant economic risks associated with carbon regulation, accelerated depreciation, and decommissioning costs.

4. Departing customers must pay additional non-bypassable charges to support state-mandated programs that retail customers already pay. In California and Nevada, for example, departing customers are expected to pay for decommissioning costs. Oregon is potentially facing hundreds of millions of dollars in costs associated with decommissioning coal plants. Rather than place these costs on the customers who are the last to leave the system, these costs represent the multi-decades of coal combustion and should be paid by all customers. Other legislative mandates, as listed in CUB's Opening Comments should also be placed into non-bypassable charges.

[15] UM 2025, AWEC Opening Comments, page 24.

5. Oregon should prioritize identifying a fair system to ensure that all load serving entities are responsible for resource adequacy. Asking residential and small commercial customers to take on this responsibility for all customers is simply unfair. This requires resource planning and a commitment to future capacity.

6. Decarbonization versus deregulation. Governor Brown's recent Executive Order 20-04 makes clear that the priority for our energy system is decarbonization. Recent legislative activity has also focused primarily on carbon emissions. States like Washington and Nevada seem to be moving away from deregulation as they focus on decarbonization. In Oregon, where direct access is allowed in statute, it is not necessary to abandon direct access, but we must ensure that direct access does not interfere with higher priorities. Utility IRPs reflect investments to support decarbonizing Oregon electric grid, but those investments are unlikely to be made if there is too much uncertainty over future load. NIPPC supports PGE's IRP call for new investment in resources to meet its load forecast, while simultaneously calling for removal of direct access caps so much of that load can leave the utility and not pay for the new resources. This makes no sense. We cannot afford to pursue more clean resources through the utility based on load forecasts that include customers who will be allowed to abandon the utility. CUB remembers the late 1990s when deregulation was being considered. The uncertainty led utilities to stop making investments.

CUB looks forward to continuing to engage in this proceeding to help create a fair and sustainable direct access program. While each state is unique, CUB believes there are real lessons that can be learned from various direct access programs that have applicability in Oregon.

Signed this 6th of May, 2020.

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