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August 23, 2021

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

**RE: UM 2024 – AWEC’s Investigation Into Long-Term Direct Access Programs –
PacifiCorp’s Direct Access Straw Proposal**

Enclosed for filing is PacifiCorp’s, dba Pacific Power, Straw Proposal to help focus the scope of this investigation in the early stages by identifying elements of the Commission’s current Long-Term Direct Access programs that parties initially believe should be scrutinized and subject to potential modification

Informal inquiries on this filing may be directed to Cathie Allen at (503) 813-5934.

Sincerely,

Shelley McCoy
Director, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY
COMMISSION OF OREGON**

UM 2024

In the Matter of

ALLIANCE OF WESTERN ENERGY
CONSUMERS

Petition for Investigation into Long-Term
Direct Access Programs

**PACIFICORP'S STRAW
PROPOSAL**

PACIFICORP'S STRAW PROPOSAL

I. Introduction

PacifiCorp, dba Pacific Power, appreciates the opportunity to submit its straw proposal identifying issues for investigation and potential modification in this docket.

A. Purpose of the Straw Proposals

- Docket UM 2024 was opened to investigate Oregon's long-term direct access (LTDA) programs.¹ As PacifiCorp understands it, the purpose of straw proposals is to help focus the scope of this investigation in the early stages by identifying elements of the Public Utility Commission of Oregon's (Commission) current LTDA programs that parties initially believe should be scrutinized and subject to potential modification.
- Consistent with this purpose, PacifiCorp's straw proposal provides an overview of the design and operation of PacifiCorp's LTDA program and identifies elements of the program and Commission policy that PacifiCorp believes should be scrutinized and subject to potential modification.
- The straw proposal does not purport to identify PacifiCorp's legal arguments or to address the issues raised in the Stipulated Issues List,²

¹ *In re Alliance of Western Energy Consumers Petition for Investigation into Long-Term Direct Access Programs*, Docket No. UM 2024, Order No. 19-271 (Aug. 15, 2021).

² See Ruling of Administrative Law Judge Granting Motion to Adopt Procedural Schedule (Feb.21, 2020) (adopting Stipulated Issues List with modifications). In addition, PacifiCorp filed comments in this docket on March 16, 2020, May 6, 2020, and August 19, 2020. While those comments provide additional context

recognizing that the purpose of submissions at this stage is to identify elements for potential review. Testimony and briefing will come during later stages of the docket.

II. Key Factors for Identifying Elements of LTDA Subject to Modification

Below is a brief overview of key factors that should inform LTDA program examination.

A. Timing and Purpose for Review of LTDA Programs

- PacifiCorp agrees with the proposition that LTDA programs should be periodically reviewed. PacifiCorp's LTDA program is generally working well as designed, but changes in technology, experience with current programs, and advances in state energy policy make the periodic review of LTDA programs appropriate.
- The purpose of periodic review is not to change the fundamental underpinnings of Oregon's direct access policy, but to check in on existing programs to see whether they are working as intended. While circumstances may change and caps may need examination, there has been no change to Oregon's direct access laws that would change the underlying statutory or policy goals underlying LTDA programs.
- The parameters are clear: LTDA programs should provide direct access to a limited set of customers under terms and conditions that "ensure" that non-participating customers will see no unwarranted shifting of costs.³
- Those parameters are not only relevant today; they are more important than ever.

B. Consistency with Oregon Direct Access Law

- Programs should be modified only to the extent necessary to ensure continued compliance with Oregon's direct access law.
- The Commission has historically taken a well-reasoned approach to discharging its statutory duties with respect to its duty to implement direct access programs while protecting customers from unwarranted cost-shifting. The question presented in this docket is whether the programs need to be updated to ensure Commission policy stays aligned with its duties.
- Below are key program elements the Commission might examine as part of LTDA implementation.

for PacifiCorp's positions in this straw proposal and PacifiCorp's understanding of Oregon's direct access laws, PacifiCorp will not repeat those comments here.

³ ORS 757.607(1).

- Program caps. The Commission has utilized program caps to mitigate customer exposure to risk and unintended consequences of program design.⁴ To the extent some stakeholders wish to reexamine program caps, it may be appropriate to do so given the passage of time. The purpose of caps, however—to ensure that direct access causes no unwarranted shifting of costs to non-participating customers—remains salient and continues to inform appropriate Commission decision-making.⁵
- Transition adjustment and customer opt-out charges. The Commission has utilized transition adjustments and customer opt-out charges to ensure departing direct access customers carry their fair share of costs before departing the system.
 - To the extent stakeholders wish to modify or eliminate these customer protections, they must demonstrate that removal will not result in unwarranted cost-shifting.
 - These protections should also be re-examined to ensure they are sufficiently robust. Since PacifiCorp’s LTDA program was adopted, a number of key energy policy considerations have changed, including the identification of near-term regional capacity deficits, the need to meet clean energy targets established by HB 2021, continued impacts of SB 1547, and the acceleration of legislation making the Commission responsible for implementing state energy policy goals through its regulatory authority, among other things.
- Other customer protections. As noted in more detail below, it is important to add additional customer protections to ensure direct access customers are carrying their fair share of costs associated with resource adequacy, and other legislative and public policy issues.
- The fact that direct access may not be financially attractive does not mean that implementation of direct access is wrong.
 - Assuming existing customer protections accurately reflect the measures needed to protect customers from unwarranted cost

⁴ As the Commission has noted, cost-of-service customers are increasingly relied upon to finance system improvements that impose near-term costs to adapt the system to new utility and customer-sited technology intended to lead to long-term economic and environmental benefits for all customers. Such is the case with demand response, storage initiatives, electric vehicles, and other programs. *See, e.g., In re Rulemaking Related to a New Large Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 (Sept. 14, 2018).

⁵ ORS 757.607(1).

shifting, those customer protections should remain in place. The Commission cannot remove customer protections on the theory that businesses have a right to cost-effectively exit the regulated system while putting Oregon's collective social costs on remaining customers. They do not.

- The impact of the fair sharing of Oregon's collective social costs on a consumer's direct access decision is not a sufficient rationale for modifications to direct access policy that shift costs of state policy. This was true in 1999 and it remains true today.

III. PacifiCorp's Long-Term Direct Access Program

A. History of Schedule 296

- PacifiCorp offers LTDA under its Schedule 296.
- Service under Schedule 296 is relatively new. AWEC notes that the Commission has not engaged in a "truly comprehensive investigation into direct access since 2004. . . ." ⁶ While this is true with respect to a generic review of SB 1149, PacifiCorp's LTDA program was adopted in 2015, sixteen years after the passage of SB 1149 and eight years after Oregon established a Renewable Portfolio Standard. ⁷
- Core elements of PacifiCorp's LTDA program were litigated on the merits in 2015. Unlike PGE's long-term direct access program, which was adopted through a tariff filing with little process, ⁸ key customer protections in PacifiCorp's LTDA program were adopted by the Commission after significant investigation and fact-finding.
- A number of things have changed since 2015, including new legislative mandates, different market conditions, and changes in energy policy and technology, but PacifiCorp's LTDA program is relatively new in the context of direct access, and its elements were thoughtfully reviewed by the Commission.

B. Key Elements of Schedule 296

PacifiCorp's LTDA program is available to large nonresidential customers who have chosen to opt-out of Schedule 201 service (Cost-Based Supply Service) for a five-year period. Under Schedule 296, customers are subject to a five-year transition period, during which time they are subject to generation fixed costs

⁶ See *Alliance of Western Energy Consumers' Petition for a General Investigation into Long-Term Direct Access Programs* at 5 (June 10, 2019).

⁷ See *In re PacifiCorp dba Pacific Power Transition Adjustment, Five-Year Cost of Service Opt-out*, Docket No. UE 267, Order No. 15-060 (Feb. 24, 2015).

⁸ PGE Adv. No. 02-17 (Oct. 2, 2002).

(calculated pursuant to Schedule 200), a Customer Opt-out Charge, and a Transition Adjustment. After the transition period, a direct access customer pays for delivery service alone. A Schedule 296 direct access customer must provide four years' advance notice in order to return to cost-of-service rates.⁹

1. Transition Adjustments

The Schedule 296 Transition Adjustment is the estimated difference between the value of the electricity that is freed up when a customer chooses to leave cost-based supply service and regulated net power costs in Schedule 201. As noted above, Transition Adjustments are paid (or received) for a five-year period.

2. Customer Opt-Out Charge

The Schedule 296 Customer Opt-Out Charge applies during a customer's five-year enrollment period. The Customer Opt-Out charge is intended to represent the fixed generation costs incurred by the company to serve all customers offset by the value of freed-up power made available by the departing customers for years six through 10 after a customer's departure from cost-of-service rates. As noted above, the Customer Opt-Out Charge applies for a five-year period.

3. Program Cap

PacifiCorp's five-year program is currently capped at 175 average megawatts of departing load.¹⁰

C. Elements of PacifiCorp's Schedule 296 the Commission Should Review for Potential Modification

1. Transition Adjustment

The Transition Adjustment has been developed through the course of multiple annual filings and does not need modification. PacifiCorp's ongoing valuation of its generation resources continues to comply with state policy. Furthermore, modification of the Transition Adjustment should be

⁹ See PacifiCorp Schedule 296 for additional detail. If a customer provides notice of its intention to return within the five-year transition period, the Customer Opt-Out Charge will cease to apply to that customer after the date of the official notice (Transition Adjustments will continue to apply during the remainder of the applicable period).

¹⁰ The parties noted when the cap was adopted that PGE's program cap was higher but acknowledged that PacifiCorp had a smaller amount of potentially eligible load. *See In re Public Util. Comm'n of Oregon Investigation of Issues Relating to Direct Access*, Docket No. UM 1587, Order No. 12-500 at 8 (Dec. 30, 2012). The Commission acknowledged concerns that utilities may be differently situated and that it was important that "any program that allows customers to elect direct access permanently be tailored for each utility, be designed to protect other customers from cost-shifting, and be limited to large, sophisticated customers." *Id.* at 9.

specific to individual utilities, and not subject to blanket policies outside of contested cases that allow for a thorough analysis of specific issues for each utility.

2. Customer Opt-Out Charge¹¹

- The Commission concluded after presentation of evidence in Docket UE 267 that the Customer-Opt-Out Charge is a necessary element of PacifiCorp's LTDA program under Oregon's direct access laws.¹²
- The Commission conceded, however, that although transition costs may exist through at least a 20-year period, PacifiCorp's cost recovery will be limited to a 10-year period.¹³
- As CUB and AWEC have noted, however, some states, like California, do not have a time-limited end-date for payment of stranded costs. Instead, departing customers pay those costs until the individual assets are depreciated and contracts are finished.¹⁴
- PacifiCorp believes it is appropriate to examine the timeframe covered by the Customer Opt-Out charge to determine whether its limited duration and allocation of costs makes PacifiCorp's LTDA program "unusually generous," as CUB has described Oregon direct access, and thus may risk shifting costs to non-participating customers.¹⁵ Expanding the Customer-Opt-Out Charge to 20-years would support the resource transitions directed by SB 1547 and HB 2021 without shifting all the costs of those policies to cost-of-service customers.

3. LTDA Cap

- No change to the LTDA Cap is needed.
- The Commission has historically utilized program caps to mitigate customer exposure to risk and unintended consequences of program design. PacifiCorp agrees with CUB that changes to caps should not be considered unless the Commission can be 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. Unless the impacts of any changes to existing

¹¹ This charge is sometimes referred to as the "Consumer Opt-Out Charge."

¹² See Order No. 15-060 at 6 (Feb. 24, 2015).

¹³ *Id.* at 6-7.

¹⁴ Closing Comments of CUB at 2-3 (May 6, 2020); AWEC Opening Comments at 6 (Mar. 16, 2020).

¹⁵ Closing Comments of CUB at 1.

programs can be clearly quantified and forecast, caps remain critical.

- Caps are particularly important for mitigating known risks that are difficult to quantify, as they provide a trial period for program design during which risks to non-participating customers are limited. Some potential impacts of direct access are difficult to quantify, including the risks and uncertainty caused by Electric Service Suppliers (ESS) leaning on the system in various ways, or the risk of return.

4. **Other Non-Bypassable Charges Needed to Prevent Unwarranted Cost Shifting**

- **Stranded Costs**
 - Decommissioning costs. As a number of parties have noted, Oregon is potentially facing hundreds of millions of dollars in costs associated with decommissioning coal plants. These investments were made many years ago and were deemed prudent as the least-cost least risk resources needed to serve Oregon customers. The Commission should ensure that these costs be paid for by all customers.
 - Legislative mandates and public policy costs. Parties have identified additional legislative mandates and public policy costs shouldered by utility ratepayers for which direct access customers should bear their share of responsibility. The Commission should investigate which costs associated with legislative mandates or public policy directives are bypassed under the current direct access framework and ensure that direct access customers are allocated their fair share of such costs.¹⁶ Examples of potential public policy costs include community solar, transportation electrification, community resilience, low-income rates, and community and equity advisory groups.
- **Other Cost Shifting**
 - Resource adequacy (RA) obligations. PacifiCorp recognizes that the Commission is addressing this issue in Docket UM 2143 but would emphasize the importance of requiring ESSs to invest in capacity and carry their share of RA obligations in the region.

¹⁶ Additional mandatory costs identified under this umbrella include, among others, costs of demand response, incremental additional costs associated with mandatory purchases from qualifying facilities under the Public Utility Regulatory Policies Act, accelerated costs of coal retirement, and others.

- Decarbonization obligations. The Commission should ensure ESSs are doing their part to meet Oregon’s decarbonization goals across the board.
- Provider-of-last-resort obligation; limitations on right to depart. The Commission previously considered and rejected a proposal that a LTDA customer’s right to return should be curtailed. Depending on how the Commission addresses the other elements of LTDA programs, PacifiCorp believes it may be worthwhile to consider imposing restrictions on the former LTDA customer’s ability to select direct access in the future to avoid gaming LTDA to avoid the costs of new state policy, which would shift those costs to other customers.
- **Increased Transparency and Regulatory Requirements for ESSs**
 - Additional reporting and regulatory requirements. The Commission should evaluate the regulatory requirements and transparency/reporting requirements ESSs are currently under and should evaluate whether additional regulatory oversight is appropriate.

IV. Conclusion

- PacifiCorp’s LTDA program is generally working well, but changes in technology, experience with current programs, and advances in state energy policy make Commission review of LTDA programs appropriate.
- The Commission-approved customer protections that are part of PacifiCorp’s existing LTDA program remain critical to ensure non-participating customers are protected from unwarranted cost shifting and should be retained.
- As part of this investigation, the Commission should evaluate additional sources of cost-shifting to ensure they are addressed by LTDA programs, including decommissioning costs, costs associated with legislative requirements, and costs associated with public policy mandates. The Commission should ensure ESSs carry their fair share of other energy policy obligations, including RA and decarbonization obligations, and should subject ESSs to additional regulatory oversight and transparency to ensure Commission mandates are being followed.