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Via Electronic Filing

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

RE: Docket No. ADV 1112 – Calpine Energy Solutions, LLC’s Comment Letter Objecting to Portland General Electric Company’s Advice No. 20-09

Dear Commissioners:

This comment letter is submitted on behalf of Calpine Energy Solutions, LLC (“Calpine Solutions”) in opposition to Portland General Electric Company’s (“PGE”) Advice 20-09, which proposes to amend PGE’s Schedule 136 to charge Long-Term Direct Access (“LTDA”) and New Load Direct Access (“NLDA”) customers for both start-up costs and ongoing payments for energy sold by community solar projects to PGE. Specifically, for the reasons explained below, Calpine Solutions requests that the Public Utility Commission of Oregon (“Commission”) defer a determination on PGE’s proposal until PGE’s next general rate case, consistent with the Partial Stipulation on Direct Access Issues in UE 335 (hereafter the “Stipulation”). Alternatively, if the Commission reaches the merits of PGE’s proposal at this time, Calpine Solutions requests that the Commission deny PGE’s proposal to allocate costs of the community solar program to LTDA and NLDA customers because those customers have no opportunity to participate in the program. Finally, at the minimum, if PGE’s proposal to allocate the above-market costs of the program to all direct access customers is approved at this time, Calpine Solutions recommends that the Commission direct PGE to work with stakeholders to allow direct access customers to participate in the community solar program.

COMMENTS

PGE proposes to convert its Schedule 136 Community Solar Program Start-Up-Cost Recovery Mechanism into an ongoing cost-recovery tariff for all costs of the program for its 20-plus-year life and to further require that LTDA and NLDA customers pay for both the start-up costs and all ongoing rate subsidies to the program over the next few decades. The start-up costs appear to be relatively minor. But PGE’s proposal to allocate to direct access customers the ongoing above-market costs of payments and/or rate credits under the community solar project’s 20-year power purchase agreements would likely be a significant charge to direct access

customers. In the first enrollment period, the bill credit rates are set at 11.2 cents per kilowatt hour, which includes a credit for both retail distribution and generation charges and far exceeds PGE's current and forecasted avoided costs of energy against which the Schedule 136 subsidy charge would be calculated. PGE did not provide estimates of the likely above-market charges to be assessed under Schedule 136, but PGE explained that under its rate spread method, LTDA and NLDA customers would see a rate increase of 1.7% to 6.7% on their distribution rates paid to PGE if the rate subsidy was hypothetically \$10 million per year.¹ Although PGE states that this proposal was reached as part of a "settlement" with solar developers seeking to enter into contracts to sell power to PGE in the community solar program, no direct access customers or electricity service suppliers ("ESSs") were parties to the settlement.

Needless to say, PGE's proposal raises many complicated questions, including important direct access policy questions and, if the proposal were acceptable, important rate spread issues (e.g., whether a cents/kWh rate spread or an equal-percentage-of-revenue-collected spread is more appropriate). However, at this time, Calpine Solutions has two primary objections to PGE's proposal: (a) PGE's proposal violates the UE 335 Stipulation; and (b) PGE's proposal unjustly charges direct access customers for a program in which direct access customers are uniquely excluded from participating.

A. PGE's Proposal Violates the UE 335 Stipulation

The first major problem with PGE's proposed Advice No. 20-09 is that it violates both the plain terms and the spirit of the Commission-approved UE 335 Stipulation that resolved issues affecting PGE's direct access programs until at least the service year commencing 2022. PGE's proposal should be denied on this ground alone to protect the sanctity of compromise resolutions in Commission proceedings and allow for a proper vetting and evaluation of PGE's proposal.

Specifically, in PGE's last general rate case (UE 335), numerous direct access issues were raised by PGE, Calpine Solutions, and other interested parties. Several parties entered into the Stipulation to resolve the issues affecting direct access. The Stipulating Parties were PGE, Calpine Solutions, Staff, Fred Meyer Stores and Quality Food Centers, Divisions of The Kroger Co., and Albertsons Companies, Inc. The Stipulation addressed several issues, large and small, affecting direct access programs and rates charged to direct access customers. Those issues included transition adjustment calculations, ESS scheduling practices, the 300-aMW program participation limit on PGE's LTDA program and how it affected the program limit in the NLDA program, transfer of freed-up renewable energy certificates to ESSs, allocation of tax benefits recognized in UM 1920 related to the federal tax relief legislation, treatment of direct access customers who fall below program eligibility size limits due to energy conservation efforts, changes to treatment of direct access customers relocating within PGE's territory, and PGE's agreement to address its fee for changing locations in its next general rate case.²

¹ PGE's Advice No. 20-09, at Attachment p. 1 (April 23, 2020).

² Order No. 19-129 at App. B at pp. 1-4.

Given the effort that went into resolving disagreements regarding the many issues affecting direct access, the Stipulation contained an agreed-to period during which the Stipulating Parties, *including* PGE, agreed not propose new changes affecting direct access. Specifically, the Stipulation contained the following provision:

Term. The Stipulating Parties agree to refrain from making new proposals to the Commission for any changes that would become effective for the existing Direct Access programs for service years 2020 or 2021. The Stipulating Parties may continue to advocate their respective positions in UM 1953, PGE's green tariff proposal, and in any docket(s) opened by the Commission to fulfill statutory obligations or at the request of the legislature.³

The "service year" 2021 corresponds to service commencing after customers enroll in the September 2020 enrollment window for direct access service beginning January 1, 2021. In other words, absent agreement of all parties to the Stipulation, no new changes may take effect in direct access programs and rates before January 1, 2022.

With respect to the limited exceptions to the term of the Stipulation, the Stipulating Parties' testimony stated:

Because Stipulating Parties have established positions in Docket UM 1953, PGE's green tariff proposal, they were concerned that the Stipulation could limit their ability to advocate for those positions. As a result, Stipulating Parties agreed that they may continue to advocate for their respective positions in that docket. In addition, Stipulating Parties agreed that they may argue their positions in new dockets opened by the Commission to fulfill statutory obligations or at the request of the legislature.⁴

Therefore, the Stipulation allows parties to continue to advocate their positions on the green tariff and new policy dockets opened by the Commission, but otherwise bars changes affecting direct access rates from taking effect until at least 2022.

Critically, material concessions were made by direct access advocates, including Calpine Solutions, in the Stipulation. Most notably, the Stipulation included the concession that the 300-aMW program cap would remain in place during the Stipulation term. Indeed, the Alliance for Western Energy Consumers ("AWEC") actively opposed the Stipulation due to its maintenance of the 300-aMW cap and has now appealed the Commission's orders approving the Stipulation on that ground. In approving the Stipulation over objection, the Commission found "continuation of the existing 300 aMW cap provides reasonable protection to cost-of-service customers against unknown negative potential impacts associated with large numbers of customers exiting the system, as part of a broader compromise of direct access issues."⁵ Further,

³ Order No. 19-129 at App. B at pp. 2-4, ¶ 6.

⁴ UE 335 Stipulating Parties/500, Kaufman–Waidelich–Bieber–Higgins–Macfarlane/4.

⁵ Order No. 19-129 at 19.

“[b]y largely continuing the current program in size and form, the stipulation ensures that this potential system impact can be better understood before we make significant changes to the program’s participation requirements or size.”⁶ Relatedly, the Commission found comfort in the fact that the Stipulation “includes a commitment on behalf of parties to re-examine direct access issues over the next few years”⁷ – which the parties are now doing in UM 2024 where the very issue PGE raises in its Advice 20-09 is being addressed. In other words, the concession by Calpine Solutions and others to maintain the 300-aMW cap for two more service years prevented the need to consider and potentially adjust other significant long-term policy and rate issues that may become more pressing if the cap were expanded.

PGE’s new proposal side-steps the bargain struck in UE 335 and would impose new charges on direct access customers without consideration of expanding the program cap or other important issues, such as whether small customer sizes should be allowed to participate in the LTDA programs. In effect, PGE seeks to enforce aspects of the Stipulation favorable to PGE and to ignore the protections the Stipulation was intended to provide direct access customers and ESSs during the Stipulation term. By doing so, PGE’s proposal violates both the plain terms and the spirit of the UE 335 Stipulation.

Calpine Solutions asked PGE to explain whether the proposal violates the UE 335 Stipulation, and PGE disagreed that its proposal violates the Stipulation. PGE primarily asserts that the “advice filing does not violate the stipulation signed by PGE because it does not request a change to the LTDA program; it concerns PGE’s Community Solar Program cost allocation, which was not part of the approved Stipulation.”⁸ Calpine Solutions disagrees. The fact that the proposal is made through a special rate rider is a distinction without a difference. The direct access programs are implemented through numerous different rate schedules, rules, agreements, and Commission orders, as is demonstrated by the list of issues resolved in the Stipulation set forth above. If PGE could side-step the Stipulation merely by designing a new supplemental schedule in its Tariff, PGE could completely defeat the intent of the Stipulation. As PGE’s own arguments in its advice filing make clear, PGE’s proposal is a material and precedent-setting change in the direct access rates and policy. Second, PGE is wrong to suggest that the allocation of the costs of the community solar program was an unknown issue at the time of the Stipulation. The community solar program was mandated by amendments to the renewable portfolio standard in 2016, and PGE has been engaged in rulemakings and related proceedings, including UM 1930, to implement the legislation since that time. If PGE wished to have the Stipulation to carve out the right to allocate long-term above-market costs of the community solar program to LTDA and NLDA customers during the term of the Stipulation, PGE could have attempted to negotiate that right into the Stipulation.

In sum, PGE’s proposal to assess new charges associated with the community solar program is a major policy change and is plainly barred for rates effective before 2022. The numerous rate-making and policy questions raised by PGE’s advice filing would be better

⁶ Order No. 19-129 at 19.

⁷ Order No. 19-129 at 19.

⁸ PGE Response to Calpine Information Request No. 001.

addressed in Docket No. UM 2024, which is ongoing, and with respect to cost-spread among residential and non-residential customers, in PGE's next general rate case. Accordingly, Calpine Solutions recommends that the Commission defer the issue until PGE's next general rate case to fully address the important issues in PGE's advice filing.

B. It Would Be Unjust to Allocate the Same Charges for the Community Solar Program to LTDA and NLDA Customers Because PGE's Community Solar Program Bars Those Customers from Participation

Setting aside the violation of the UE 335 Stipulation, PGE's proposed changes for Schedule 136 are unjust because they would allocate to LTDA and NLDA customers the costs of a program in which those customers are uniquely barred from participating.

In general, Calpine Solutions agrees that direct access customers should pay for the costs to support utility programs where the direct access customers have an equal opportunity to participate as similarly situated non-residential cost-of-service customers. But if the program allows for participation of non-residential cost-of-service customers while barring direct access customers, it would be unjust and unreasonable to assess an equal charge to the direct access customers who do not cause the costs of, and have no opportunity to benefit from, the program.

When asked in discovery, PGE takes the position that LTDA and NLDA customers should be barred from participating in the program. As support for this position, PGE points to Program Implementation Manual,⁹ which lists eligible customers as including virtually all non-residential cost-of-service schedules but excludes all direct access service schedules as eligible. However, to the best of Calpine Solutions' knowledge, there is no Commission order or finding that explains why direct access customers should be barred from participating. Nothing in the community solar legislation or the Commission's administrative rules expressly bars direct access customers from participating in PGE's community solar program. The statute defines "subscribers" to potentially include any "customer of an electric company."¹⁰ While there are participation limits that might prevent many large customers from achieving a "net zero" status in the community solar program, non-residential cost-of-service customers are generally allowed to participate in the program. Indeed, the participation of commercial and industrial customers may help to ensure enough customers are enrolled to provide cost support for the program's goals for low-income participation.

PGE appears to justify its position by asserting that a number of customer classes that are excluded from participating already pay the start-up costs under the existing Schedule 136.¹¹ While it is true that the existing Schedule 136 allocates the minimal start-up charge (0.005-0.007 cents/kWh) to short-term direct access customers, that does not justify allocating all short-term and long-term direct access customers the full costs of the program for its 20-plus year life while

⁹ PGE's Response to Calpine Solutions' Information Request Nos. 5 & 8.

¹⁰ ORS 757.386(1)(f).

¹¹ *PGE's Advice No. 20-09*, at p. 3 (April 23, 2020) (asserting, "As Schedule 136 is currently structured, there are a number of customer classes that contribute to the start-up costs even though those particular customers are not eligible to participate.").

continuing to exclude such customers from any opportunity to participate.

In sum, therefore, Calpine Solutions objects to the proposal to charge direct access customers as a class for the above-market costs of the program when direct access customers are uniquely excluded from participating in the program. PGE's application should be denied at this time for that additional reason. Finally, if PGE's proposal to allocate the above-market costs of the program to all direct access customers is approved at this time, Calpine Solutions recommends that, at the minimum, the Commission direct PGE to work with stakeholders to allow direct access customers to participate in the community solar program.

CONCLUSION

For the reasons explained above, Calpine Solutions requests that the Commission defer a determination on PGE's proposal until PGE's next general rate case, consistent with the UE 335 Stipulation. Alternatively, if the Commission reaches the merits of PGE's proposal at this time, Calpine Solutions requests that PGE's proposal to allocate costs of the community solar program to direct access customers be denied because direct access customers have no opportunity to participate in the program. Finally, at the minimum, if PGE's proposal to allocate the above-market costs of the program to all direct access customers is approved at this time, Calpine Solutions recommends that the Commission direct PGE to work with stakeholders to allow direct access customers to participate in the community solar program.

Sincerely,

/s/ Gregory M. Adams

Gregory M. Adams
Attorney for Calpine Energy Solutions, LLC