

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of Adoption of Rules Relating to)	DOCKET NO. AR 660
Resource Adequacy)	
)	CALPINE ENERGY SOLUTIONS, LLC’S
)	OPENING COMMENTS ON PROPOSED
)	RULES
)	

I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits its opening comments to the Public Utility Commission of Oregon (the “Commission” or “OPUC”) on the Notice of Proposed Rulemaking filed with the Oregon Secretary of State on November 27, 2023 (hereafter, “Proposed Rules”).

As has been previously expressed, Calpine Solutions supports the Commission’s efforts to develop a Resource Adequacy framework applicable to load responsible entities (“LREs”) regulated by the Commission. Calpine Solutions actively engaged in the informal stage of this rulemaking process, including participation in workshops and submission of multiple rounds of written comments recommending revisions and improvements to Staff’s proposals. Developing Resource Adequacy rules requires close attention to technical details, and Calpine Solutions appreciates Staff’s consideration and inclusion of many important technical revisions it has proposed for the rules.

However, as was expressed at the conclusion of the informal rulemaking phase, Calpine Solutions continues to have serious concerns with the Proposed Rules’ lack of a Capacity Backstop Charge option, or at the minimum, guidelines as to the expectations for incumbent

utilities to accept offers by electricity service suppliers (“ESSs”) to purchase any excess capacity and transmission that would meet the requirements of the Regional Program. The administrative rules could have a serious adverse effect on the competitive retail market in Oregon if one of these alternative compliance options is not adopted for ESSs and direct access customers. In addition to that critical issue, there are a number of additional clarifications that the Commission should make before finalizing the Proposed Rules.

Calpine Solutions has reviewed and agrees with all of the points and recommendations made by the Northwest & Intermountain Power Producers Coalition’s (“NIPPC”) opening comments on the Proposed Rules, and adopts NIPPC’s recommendations as if restated in full herein. Calpine Solutions’ opening comments will summarize the main points without being overly repetitive of the detailed comments submitted by NIPPC on the Proposed Rules.

II. COMMENTS

A. **Alternative to WRAP-Style Compliance: The Commission’s Administrative Rules Should Provide the Option for a Capacity Backstop Charge for Direct Access Customers, or At Least Provide Provisions and Guidance to Facilitate the Utilities’ Offer of Excess Capacity to Electricity Service Suppliers on a Timely, Prudent, and Nondiscriminatory Basis.**

Calpine Solutions continues to have a fundamental concern that the compliance options in the Proposed Rules are, in effect, exclusively limited to full compliance with the terms and conditions of the Western Resource Adequacy Program (“WRAP”) Tariff’s Forward Showing (“FS”) Program. Although Calpine Solutions is currently a participant in the WRAP, Calpine Solutions continues to recommend that the Commission not rely solely on WRAP-style compliance for ESSs and direct access customers. The WRAP represents a significant shift in regional capacity and transmission adequacy practices. Among other potential issues, it remains unclear whether all LREs will be able to procure resources fully compliant with WRAP’s new

requirements, especially WRAP’s FS Transmission Requirement. As explained in detail in NIPPC’s opening comments, serious questions remain as to whether adequate firm transmission exists throughout the region for all LREs to meet WRAP’s FS Transmission Requirement.¹ Absent significant changes in practices of regional transmission providers to make advance procurement of firm transmission feasible in more instances or significant expansion of the regional grid, it is unclear how all LREs will comply with the WRAP’s FS Transmission Requirement.

Although the Proposed Rules include parallel State Program Requirements for non-participants in WRAP, the State Program Requirements for advance procurement of capacity and transmission are no less stringent than those in WRAP.² Thus, WRAP-style compliance—including the problematic transmission requirement—is the only compliance option in the Proposed Rules.

However, making such a WRAP-only Resource Adequacy requirement a provision of becoming and maintaining good standing as an ESS in Oregon could create barriers to entry into Oregon’s retail market and limit opportunities for customers. Calpine Solutions stresses that the Commission should not assume that because WRAP is already “FERC-approved,” it is a suitable requirement to impose under Oregon law on all LREs because one of the key premises of FERC’s approval of the justness and reasonableness of the WRAP Tariff was its *voluntary* nature. As NIPPC’s opening comments explain, FERC approved the WRAP Tariff and excused its potentially infeasible transmission requirement (over NIPPC’s protest) because the WRAP

¹ See also Calpine Solutions’ Comments, Docket No. UM 2143, pp. 5-7 (June 12, 2023).

² Proposed OAR 860-095-0040.

Tariff is voluntary.³ But under the Proposed Rules now before this Commission, compliance with the WRAP's potentially infeasible firm transmission requirement would be, for all practical purposes, mandatory.

Thus, Calpine Solutions agrees with NIPPC that available evidence does not support that adoption of the WRAP's FS Transmission Requirement as a mandatory Resource Adequacy compliance option is just and reasonable as the only option for ESS compliance, and the Commission should ensure other options will be made available in its administrative rules.

Accordingly, Calpine Solutions agrees with NIPPC's comments that the Commission should include a meaningful alternative to WRAP compliance, at least for ESSs. Two reasonable alternatives available for further development include:

(1) Capacity Backstop Charge: The Commission should include an option that direct access customers pay the utility a Resource Adequacy charge, which meets the customer's ESS's Resource Adequacy obligation for that customer's load; or

(2) Request for Offers: If the Commission decides not to adopt a Capacity Backstop Charge, the Commission should at least provide guidelines that would provide some assurance that utilities will not unreasonably refuse to sell ESSs any excess WRAP-compliant capacity and transmission. In the informal phase of this proceeding, Calpine Solutions proposed that the rules could require the public utility to issue an annual request for offers ("RFO") from ESSs to buy the utility's excess capacity or transmission

³ *Northwest Power Pool*, 182 FERC ¶ 61,063, P 85 (Feb. 10, 2023) ("Further, we disagree with NIPPC's argument that [Western Power Pool's] proposal inappropriately turns the Forward Showing Transmission Requirement into an extension of the planning function of transmission providers. Rather, the WRAP is a *voluntary* program that financially binds all participants to meeting capacity and transmission showing requirements that will, as a result, provide better information to state and local regulatory agencies' planning processes." (emphasis added)).

that meets the WRAP’s definition of Qualifying Resources for use in WRAP’s Forward Showing Program and/or transmission rights meeting the WRAP’s FS Transmission Requirement. For reference and to ensure the record is complete, Calpine Solutions is attaching to these opening comments a copy of its comments in the informal phase that fully articulated the RFO proposal.⁴

Although the Proposed Rules do not include either of these options, the Commission clarified at the outset of this proceeding that these two options remain issues to be resolved in the formal rulemaking. In Order No. 23-340, the Commission stated: “As we move forward, we note that the policy issue of whether to require continued work on a capacity backstop charge or a request for offers process is before us in this discussion.”⁵

For the reasons stated above and more fully in NIPPC’s opening comments, Calpine Solutions strongly recommends that the Commission not approve the Proposed Rules without clarifying that one or both of these alternative compliance options will be made available before the effective date of the rules. As currently drafted, a State Participant’s initial binding forward showing is due April 1, 2025, and therefore the Commission may have sufficient time remaining

⁴ Attachment A (containing Calpine Solutions’ Comments, Docket No. UM 2143 (July 21, 2023)). Calpine Solutions notes that some of the other non-RFO issues addressed in its comments filed on July 21, 2023, have been resolved unless otherwise addressed in these comments and NIPPC’s opening comments, and Calpine Solutions’ July 21, 2023, comments are provided only for reference to the discussion regarding the RFO proposal on pages 2 through 7 therein.

⁵ *In the Matters of Public Utility Commission of Oregon: Investigation into Resource Adequacy in Oregon (UM 2143), and Adoption of Rules Relating to Resource Adequacy (AR 660)*, Docket Nos. UM 2143 & AR 660, Order No. 23-340 at 1 (Sept. 22, 2023).

to implement these alternative compliance options prior to the currently proposed deadline for the first binding forward showing in the new rules.⁶

Calpine Solutions agrees with NIPPC's recommendation that the Commission could further develop either of these proposals in the Docket No. UM 2024 proceeding, as opposed to delaying or extending the rulemaking in this proceeding. At a minimum, if the Commission does not adopt one of these recommendations, then it should state in the rules or in its final order that it will revisit this issue in January 2025 to review whether the WRAP's firm transmission requirement is proving to be unworkable. By that time, evidence may be available from WRAP's initial non-binding seasons to evaluate the extent of compliance with the FS Transmission Requirement and to re-evaluate whether an alternative compliance option is justified to the extent one is not adopted at this time.

B. Additional Clarifications: The Proposed Rules Contain At Least Four Other Areas Needing Further Clarification.

The Proposed Rules contain at least four other important issues that should be further clarified before the rules become binding. Some of these issues were previously raised by Calpine Solutions in the informal phase of the rulemaking, and each of these issues is addressed in detail in NIPPC's opening comments. Calpine Solutions continues to support inclusion of these important clarifications in the final rules and refers the Commission to NIPPC's opening comments for a detailed discussion these proposed revisions to the language in the Proposed Rules.

⁶ Proposed OAR 860-095-0040(2). There is at least as much time for Regional Participants because a Regional Participant may comply with the Proposed Rules as a non-binding participant in WRAP through the winter season ending March 15, 2028. WRAP Tariff, § 1 (definition of "Transition Period") & *id.*, § 15.

1. Applicable Direct Access Loads: The Proposed Rules Should Be Revised to Clarify that the Incumbent Utility Will Be the Provider of Resource Adequacy to Customers in the One-Year and Three-Year Direct Access Programs, as well Five-Year Program Customers still Paying Transition Charges.

Calpine Solutions supports the following edits as proposed in NIPPC’s opening comments:

Proposed OAR 860-095-010(16) “Regional Participant” means a Load Serving Entity that is a participant in or is officially committed to becoming a participant in a Qualified Regional Program at least 30 days prior to the Binding Forward Showing filing date of the State Program. A Regional Participant that is an electric company must include in its Regional Forward Showing the loads for which it has long-term planning responsibility in its Integrate Resource Plan and five-year program customers paying transition adjustment charges. A Regional Participant that is an electricity service supplier must include in its Regional Forward Showing the loads of customers contracted to purchase electricity from the ESS during the forecast period that are enrolled in the new large load direct access program and customers enrolled in the five-year program that are no longer paying transition adjustment charges.

* * * *

Proposed OAR 860-095-0020(2) The Informational Filing for an Electric Company must include:

(a) A monthly P50 Peak Load Forecast of cost-of-service and direct access loads for which the electric company has long-term planning responsibility in its Integrated Resource Plan and five-year program customers paying transition adjustment charges and Effective Load Carrying Capability curve over a period of the greater of four years or the longest available timeline from a Qualified Regional Program using methods consistent with outputs of the Qualified Regional Program's Advisory Forecast.

* * * *

Proposed 860-095-0030(2) The Informational Filing for an Electric Service Supplier must include:

(a) A monthly P50 Peak Load Forecast of loads of customers contracted to purchase electricity from the ESS during the forecast period that are enrolled in the new large load direct access program and customers enrolled in the five-year program that are no longer paying transition adjustment charges and Effective Load Carrying Capability curve over a period of the greater of four years or the longest available timeline from a Qualified Regional Program using methods consistent with outputs of the Qualified Regional Program's Advisory Forecast.

* * * *

Proposed 860-095-0040(4) State Participants must use a Planning Reserve Margin and Qualified Capacity Contribution consistent with a Qualified Regional Program or other

Commission-approved methodology. A State Participant that is an electric company must include within its load forecasts all loads for which it has long-term planning responsibility in its Integrate Resource Plan and five-year program customers paying transition adjustment charges. A Regional Participant that is an electricity service supplier must include within its load forecasts the loads of customers contracted to purchase electricity from the ESS during the forecast period that are enrolled in the new large load direct access program and customers enrolled in the five-year program that are no longer paying transition adjustment charges.

2. Protected Treatment of ESS Filings: The Proposed Rules Should Be Revised to Provide the Same Confidentiality Protections of an ESS's Informational Filing as Was Adopted with Respect to an ESS's Emissions Planning Reports.

Calpine Solutions supports the following edits, as proposed in NIPPC's opening comments, to Proposed OAR 860-095-0030(4) to resolve this outstanding issue:

(4) Availability of Information:

(a) A Regional Participant's most recent Regional Forward Showing submission to its Qualified Regional Program must be made available **for review only** to Qualified Parties **and only** upon request pursuant to a Modified Protected Order.

(b) The following information shall be available for review only by Non-Market Participants that have executed a Modified Protective Order:

(A) A discussion about how the overall resource strategy interacts with Resource Adequacy concerns, as required by Section 1(b);

(B) A monthly P50 Peak Load Forecast and Effective Load Carrying Capability curve, as required by Section 2(a) of this rule; and

(C) A discussion covering at least four years of the transmission rights necessary to serve P50 load, the transmission rights currently owned or used, the steps that will be taken to procure transmission rights to fill in any open position, and any expected constraints or difficulties in filling any open positions, as required by Section 2(b) of this rule

(c) For purposes of this rule. Non-Market Participants includes Commission Staff, the Citizen's Utility Board, and nonprofit organizations engaged in environmental advocacy that do not otherwise participate in electricity markets.

3. State Program Confidentiality Protections: The Proposed Rules Should Clarify that a State Participant's Binding Forward Showing Will Only Be Available to and Reviewed by Staff Or, Alternatively, Contain Comparable Confidentiality Protections to the Informational Filing.

Calpine Solutions supports the following additional clarification, as proposed in NIPPC's opening comments, to Proposed OAR 860-095-0040(5):

The Commission Staff ~~and Parties~~ should complete its compliance review for each State Participant within 90 days of filing the Binding Forward Showing. The Binding Forward Showing will not be available to persons other than Commission Staff.

4. State Program Transmission Requirement: The State Program’s Firm Transmission Requirement Should Be Further Clarified.

Calpine Solutions supports the following edits, as proposed in NIPPC’s opening comments, to Proposed OAR 860-095-0040(9) to remove the ambiguity on whether secondary network transmission service will be an allowed form of firm transmission in the State Program:

(9) A State Participant must demonstrate that it has NERC Priority 6 or NERC Priority 7 firm point-to-point transmission service or network integration transmission service ~~firm or conditional firm transmission~~ rights to deliver 75 percent of the Compliance Resources from generation source to load sink. A State Participant may request a waiver of a portion of the transmission requirement if it can demonstrate that at least one of the following conditions applies:

* * * *

III. CONCLUSION

Calpine Solutions appreciates the opportunity to comment on the Proposed Rules, and recommends that the Commission to make the revisions detailed above.

DATED: January 9, 2024.

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ATTACHMENT A

**CALPINE SOLUTIONS' JULY 21, 2023
COMMENTS, DOCKET NO. UM 2143**

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of Public Utility Commission of)	DOCKET NO. UM 2143
Oregon: Investigation Into Resource)	
Adequacy in Oregon)	CALPINE ENERGY SOLUTIONS, LLC’S
)	COMMENTS ON STAFF’S REVISED
)	DRAFT RULES
)	

I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits its comments to the Public Utility Commission of Oregon (“OPUC” or “Commission”) on the Staff’s Revised Draft Rules circulated June 30, 2023 (hereafter, “Staff’s Revised Draft Rules”). Calpine Solutions appreciates the opportunity to provide its feedback on Staff’s Revised Draft Rules. Calpine Solutions has previously provided comments and recommendations in response to prior straw proposals and draft rules and, except where expressly stated in these comments, Calpine Solutions stands by its previously stated positions and recommendations. These comments are intended to communicate whether or not certain elements of Staff’s Revised Draft Rules have resolved the concerns previously raised by Calpine Solutions and to provide comments on additional issues for which Staff requested additional feedback.

II. COMMENTS

- A. RA Backstop Charge: The Commission’s Administrative Rules Should Provide the Option for a Resource Adequacy Backstop Charge for Direct Access Customers, Or At Least Provide Provisions and Guidance to Facilitate the Utilities’ Offer of Excess Capacity to ESSs on a Timely, Prudent, and Nondiscriminatory Basis.**

In previous comments, Calpine Solutions has consistently recommended the Commission at least retain the option in the rules of developing a Resource Adequacy (“RA”) Backstop

Charge for electricity service suppliers (“ESSs”). As previously explained, locking in rules that require compliance with the Western Resource Adequacy Program (“WRAP”)—or adopting the most problematic aspects of WRAP’s current requirements in the alternative State Program Requirements—as the only practical compliance option, and tying that compliance to an ESS’s certification to operate in Oregon’s direct access programs at all, is not a reasonable course of action at this time. Calpine Solutions is therefore disappointed with Staff’s position that it will not recommend development of an RA Backstop Charge as a compliance option and continues to recommend that Staff reconsider this recommendation, particularly in light of the well-established difficulty load serving entities (“LSEs”) are likely to face in complying with the WRAP’s firm transmission requirements and the corresponding State Program’s transmission requirement. However, Staff has asked for further comments on the “idea for a capacity backstop deadband” or “other solutions to easily share capacity between entities.”¹

Calpine Solutions reiterates that its preference is for the Commission to establish a just and reasonable rate for an RA Backstop Charge that the state’s public utilities would offer as a charge to direct access customers. Calculation of such rates for direct access customers is clearly within the Commission’s jurisdiction and is the type of rate that the Commission regularly adjudicates. Indeed, at least one other state, Arizona, is currently engaged in a rate case for its largest electric utility, Arizona Public Service Company, in which one of the many issues is calculation of a backstop charge for resource adequacy in a wholesale buy-through program, which is conceptually similar to the resource adequacy issue here.²

¹ Staff’s Revised Draft Rules, Docket No. UM 2143, p. 2 (June 30, 2023).

² See Arizona Corporation Commission Docket No. E-01345A-22-0144, available at: <https://edocket.azcc.gov/search/docket-search/item-detail/26370>.

However, if a fully developed, off-the-shelf rate will not be recommended by Staff, Calpine Solutions appreciates Staff's willingness to at least consider proposing a deadband or other solutions to facilitate sale of RA to ESSs or direct access customers. The assumption that an ESS could easily negotiate a just and reasonable contract to purchase RA from the utility is misplaced.³ The utility has a competitive incentive not to enter into such an arrangement with an ESS, even if the ESS offers to buy such capacity at a reasonable price, because the ESS is a competitor for customer load in the utility's balancing area. The Northwest region does not have an organized wholesale market, or any specific rules established to prevent abuse of market power through economic or physical withholding of capacity.⁴ Thus, the risk exists that an incumbent utility may imprudently withhold excess capacity and firm transmission because the best purchase offer comes from its competitor, an ESS(s). Even if the utility decided it wishes to sell excess capacity to an ESS, there could be timing issues with facilitating such a sale within the deadlines existing in the WRAP or the corresponding State Program if the Commission does not provide any guidance as to its expectations.

Thus, Calpine Solutions supports development, at a minimum, of workable guidelines that the rules require the utilities to follow in offering resource adequacy capacity to ESSs with the goal of deterring utilities from refusing a reasonable offer by an ESS to buy the utility's excess capacity and/or transmission. Calpine Solutions offers the following proposal and recommends that Staff hold a workshop to further develop appropriate parameters:

³ See Calpine Solutions' Comments, Docket No. UM 2143, pp. 5-6 (March 13, 2023); Northwest & Intermountain Power Producers Coalition's Comments, Docket No. UM 2143, pp. 3-4 (March 13, 2023).

⁴ See *Midwest Ind. System Operator*, 105 FERC ¶ 61,146, PP 13-16 & 35-39 (Oct. 29, 2003) (discussing organized market's rules established to prevent market abuse through economic and physical withholding of capacity).

- The public utility must issue an annual request for offers (“RFO”) from ESSs to buy the utility’s excess capacity that meets the WRAP’s definition of Qualifying Resources for use in WRAP’s Forward Showing (“FS”)⁵ and/or transmission rights meeting the WRAP’s FS Transmission Requirement.⁶ The resources should include those available for any period within the upcoming two-year time horizon of the State Program’s forward showing. The utility should issue its request for offers at least 90 days prior to the WRAP’s November 1st deadline for the Summer Season Forward Showing, and the utility should provide final responses to any bidding ESSs at least 45 days before November 1st.⁷
- If the public utility rejects such offers from ESSs, the public utility must be prepared to justify the prudence of any subsequent sale of such excess capacity and transmission in a bilateral sale with another entity at a price less than the offers, if any, received from ESSs.
- Each year, the public utility must provide a backward-looking report to the Commission, subject to appropriate confidentiality provisions, describing whether the utility received any offers from ESSs in the past years, and if so, demonstrating that such capacity and transmission rights were not sold to other parties at a price less than such offers, or if such sales were made at a price lower than offers from ESS(s), explaining why such sales occurred.

⁵ See WRAP Tariff, Definitions (“Qualifying Resources”); *id.* at Part II (FS Program Requirements).

⁶ WRAP Tariff, § 16.3.

⁷ WRAP’s Summer Season begins June 1, and the Forward Showing for the Summer Season is due seven months earlier, on November 1. WRAP Tariff, Definition of “Summer Season.”

- The rules should state that nothing in this reporting and prudence evaluation is intended to limit the utility from complying with WRAP’s Holdback Requirements or Energy Deployments, such as sales made within the WRAP’s Operations Program at WRAP-established rates.⁸

The ESS RFO proposal here is intended to complement and not frustrate the provisions of the WRAP or the utilities’ participation in WRAP. The ESS RFO would occur in August and September for capacity available in the following two years. Thus, the ESS RFO would be complete prior to the WRAP’s November 1st deadline for the Forward Showing for the following year’s Summer Season deadline and thus not frustrate the utility’s ability to comply with the WRAP’s Forward Showing program. The utility would be free to transact bilaterally to sell its excess capacity to other WRAP participants in between the FS deadline on November 1st and the Operations Program so long as it does not impudently refuse to transact with ESSs only to later sell the capacity or transmission at a lower price than an ESS was willing to pay. The ESS RFO would also be complete far before the WRAP’s Operations Program for the next binding season in the WRAP and thus not interfere with the WRAP’s holdback and sharing requirements. The Western Power Pool (“WPP”) explains that “the Operations Program’s Holdback Requirement effectively sets aside a portion of capacity held by Participants that are net positive for a given Sharing Event for expected use in the form of an Energy Deployment by the Participants that are net negative for that same event.”⁹ However, WRAP’s Operations

⁸ For a detailed description of the WRAP Operations Program, *see* Western Power Pool’s WRAP Submittal Letter, FERC Docket No. ER22-2762, pp. 29-37 (Aug. 31, 2022) available at https://elibrary.ferc.gov/eLibrary/docketsheet?docket_number=er22-2762&sub_docket=all&dt_from=1960-01-01&dt_to=2022-11-11&chklegadata=false&pagenm=dsearch&date_range=custom&search_type=docket&date_type=filed_date&sub_docket_q=allsub.

⁹ WPP’s WRAP Submittal Letter, FERC Docket No. ER22-2762, p. 34.

Program begins seven days before the Operating Day,¹⁰ which is eight to 12 months after the ESS RFO period proposed here.

This proposal is designed to be within the Commission’s jurisdiction. The Commission has jurisdiction over retail rate-setting, prudence of utility’s management of its resource portfolio affecting retail rates,¹¹ and the express authority to “require an electric company to make any filings . . . that the commission determines necessary to implement [the direct access law].”¹² “[S]tates have broad powers under state law to direct the planning and resource decisions of utilities under their jurisdiction.”¹³ FERC would of course have jurisdiction to approve the resulting bilateral contracts for sale of capacity under Section 205 of the Federal Power Act, just as it does for any other wholesale transaction.¹⁴ Unlike state requirements that have been found to be preempted by the Federal Power Act, the proposed ESS RFO here does not *compel* the utility to sell its excess capacity or transmission or establish the price for such sale, and thus does not require FERC approval or impinge on FERC’s jurisdiction to regulate wholesale sales of

¹⁰ WPP’s WRAP Submittal Letter, FERC Docket No. ER22-2762, pp. 32-33.

¹¹ See *New York v. FERC*, 535 U.S. 1, 24, 122 S. Ct. 1012, 1026 (2002) (noting that FERC’s open access regime has preserved broad jurisdiction to the states, including “administration of integrated resource planning” and “authority over utility generation and resource portfolios” (internal quotation omitted)); *Ky. W. Va. Gas Co. v. Pa. Pub. Util. Com.*, 837 F.2d 600, 609 (3d Cir. 1988) (“Regarding the states’ traditional power to consider the prudence of a retailer’s purchasing decision in setting retail rates, we find no reason why utilities must be permitted to recover costs that are imprudently incurred; those should be borne by the stockholders, not the rate payers”; and “a state commission may legitimately inquire into whether the retailer prudently chose to pay the FERC-approved wholesale rate of one source, as opposed to the lower rate of another source”).

¹² ORS 757.661.

¹³ *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 733 F.3d 393, 417 (2d Cir. 2013) (internal quotation omitted).

¹⁴ 16 U.S.C. § 824(b)(1); *id.* at § 824d; see *Allco Fin., Ltd. v. Klee*, 861 F.3d 82, 99 (2d Cir. 2017) (“Because FERC has the ability to review any bilateral contracts that arise out of Connecticut’s RFPs, we hold that Connecticut’s 2015 RFP—insofar as it allows the DEEP Commissioner to direct (but not compel) utilities to enter into agreements (at their discretion) with generators, including non-QFs—is not preempted by the FPA.”).

power.¹⁵ The ESS RFO is simply a procedural mechanism to ensure, pursuant to this Commission’s RA program implemented pursuant to Oregon retail direct access law, that the utilities take prudent steps to solicit offers for excess WRAP-complaint capacity and transmission, if any, from ESSs and file a subsequent informational filing demonstrating that the utilities did not act imprudently by refusing the ESSs’ offers, if any, only to later sell the capacity and/or transmission at a lower price to another entity. The proposal uses transparency and reporting to the Commission to provide the incentive to the utility not to refuse to transact with ESSs in a discriminatory manner to the detriment of Oregon’s retail direct access market. If a utility were found to have failed to prudently sell excess capacity to an ESS offering to buy it at a higher price than other offers, the Commission would be well within its jurisdiction to disallow recovery of the resulting excess costs for generation resources in retail rates.

In sum, Calpine Solutions stresses that its preference is that the Commission develop an RA Backstop Charge that direct access customers could pay, but if Staff remains disinclined to recommend development of such a rate, Calpine Solutions recommends at least providing guidance on expectations that utilities will not imprudently refuse to sell to ESSs any excess WRAP-compliant resources to ESSs. Calpine Solutions recognizes other parties may have valid refinements to the specific proposal set forth above and looks forward to engaging with other parties to develop a workable set of criteria.

¹⁵ See *Allco Fin., Ltd.*, 861 F.3d at 99 (holding that state administered RFP for “traditional bilateral contracts” that was not designed to “override the terms set by the FERC-approved [] auction” was not preempted by FERC’s wholesale rate jurisdiction); compare to *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241, 253 (3d Cir. 2014) (invalidating state procurement program because it compelled sale and set the capacity price in the wholesale sale of capacity); *New Eng. Ratepayers Ass’n*, 168 FERC ¶ 61,169, PP 40-45 (Sept. 19, 2019) (holding that state law that compelled utility to purchase and established a rate for wholesale sales of electric energy from certain biomass and waste facilities intruded on FERC’s jurisdiction over wholesale sales of electric energy).

B. Regional Participants: The Draft Rules Should Clarify the State’s Requirements for Regional Participants.

Calpine Solutions’ prior comments recommended that the rules provide more details regarding the process for demonstrating compliance through participation in a Regional Program, and whether an LSE must be a binding participant by a date certain in the Regional Program to avoid the need to comply with the State Program.

In response, Staff clarified orally at the workshop that a Regional Participant does not need to be a binding participant by any specific date to be exempt from the State Program in the interim before it becomes a binding participant in the Regional Program. This is a welcome clarification. Calpine Solutions notes that Staff’s clarification is consistent with the proposed rules’ definition of “Regional Participant,” which does not include a requirement to be “binding” participant and instead only requires that the LSE be “a participant in or committed to a Qualified Regional Program.”¹⁶ However, Calpine Solutions recommends the point be clarified more unambiguously in the proposed rules themselves to ensure persons not at the workshop understand the meaning and intent of the rules on this important detail regarding the proposed RA program.

Additionally, no changes were made to the draft rules in response to the following questions posed by Calpine Solutions’ prior comments:

- The form and deadlines for any necessary filings with the Commission to demonstrate the LSE is a Regional Participant; and
- Whether and how an LSE may switch between being a being a Regional Participant and a State Participant, or vice versa.

Calpine Solutions recommends that those points also be clarified in the rules.

¹⁶ Staff’s Revised Draft Rules, § 2.f.

C. ESS's Informational Filings: The Draft Rules Should be Clarified Regarding the Informational Filings by ESSs.

Calpine Solutions' prior comments recommended that two clarifications to the rules regarding ESSs' Informational Filings,¹⁷ but only one of those two issues have been fully clarified.

1. Regional Participants' Data Submissions (Draft Rules § 4.c.)

First, Calpine Solutions appreciates Staff's deletion of the vague term "data" from the prior version of the proposed rules (§ 4.c.) and agrees that the prior ambiguity regarding the information required is clarified by Staff's new use of the phrase "most recent Regional Forward Showing submission." This edit resolves Calpine Solutions' prior concern.

2. Protective Treatment of Confidential Material (Draft Rules §§ 4.c. & 4.d.)

Second, however, Calpine Solutions continues to recommend further revision and correction to the confidentiality issue in §§ 4.c. and 4.d.

As prior comments explained, the requirement that an ESS include with its Informational Filing a load forecast and transmission requirements over at least the next four years should be covered by the same strict protective order provisions as the ESS's emissions planning report rules in AR 641.¹⁸ Staff's Revised Draft Rules did not make any changes regarding this issue in § 4.d. Staff did add a provision in § 4.c., which appears to suggest the LSEs' (utility and ESS) submission of most recent Regional Forward Showing submission will be available only to "Qualified Parties," which is limited to Staff and Citizens Utility Board. Calpine Solutions

¹⁷ Calpine Solutions' Comments, Docket No. UM 2143, pp. 10-12 (June 12, 2023).

¹⁸ See Calpine Solutions' Comments, Docket No. UM 2143, pp. 11-12 (June 12, 2023) (discussing Notice of Proposed Rulemaking, Docket No. AR 651, at Proposed OAR 860-038-0405(8) (Feb. 27, 2023))

conceptually supports that change, subject to the recommended edits below. However, that does not resolve the separate issue raised by Calpine Solutions regarding load forecasts and transmission requirements in § 4.d. The rules developed in AR 641 for confidential treatment of ESSs' Emissions Planning Reports were collaboratively developed by ESS representatives and public interest parties with an interest in reviewing the material, and they should also apply to the same type of information in the RA Informational Filing to preserve the intent of adopting those unique levels of protection in what will ultimately be part of the same filing. That could be accomplished by having § 4.d. simply cross-reference the Emissions Planning Report rule in Proposed OAR 860-038-0405(8) for purposes of availability of the information in the Informational Filing or by reproducing the same provisions as modified into § 4.d. of the RA rules.

Relatedly, the confidentiality provision of § 4.c. should be further clarified. The wording of the new confidentiality provision in § 4.c. is phrased in a way that does not preclude wider distribution of the Regional Forward Showing than Staff appears to intend. Thus, with respect to § 4.c., Calpine Solutions recommends the following edit:

Regional Participants must include their Qualified Regional Program's most recent Advisory Forecast and the Electric Service Supplier's most recent Regional Forward Showing submission to its Qualified Regional Program as part of their Informational Filing. These may be included as an appendix chapter. ~~The Regional Forward Showing must be provided to~~ Only Qualified Parties may obtain a copy of the filing of the Regional Forward Showing.

D. State Program Requirements: The Draft Rules Should Be Clarified Regarding the State Program Requirements.

As discussed below, Calpine Solutions continues to recommend certain revisions and clarifications with respect to Staff's Revised Draft Rules' provisions for the State Program Requirements.

1. Initial Binding Showing (Draft Rules § 5.a.)

Calpine Solutions previously recommended that Staff’s proposed initial Binding Forward Showing of April 1, 2025, should be delayed given that the WRAP binding phase does not necessarily start that early.¹⁹ Staff’s Revised Draft Rules made no change to the proposed start date of April 1, 2025, for the State Participants. Calpine Solutions continues to support a later start date for the binding phase of the State Program.

2. Planning Reserve Margin and Qualifying Capacity Contribution (Draft Rules § 5.c.).

Calpine Solutions previously commented that Staff’s initial proposal to provide the Planning Reserve Margin (“PRM”) and Qualifying Capacity Contributions (“QCC”) by February 1 would allow just two months prior to the due date for the LSE’s forward showing, and instead there should be at least nine months.²⁰ Staff’s Revised Draft Rules deleted the February 1 date and revised the rules to state that State Participants should use a PRM and QCC consistent with the Regional Program. Calpine Solutions appreciates Staff’s responsiveness to its timing concern, but is concerned that a non-participant in WRAP would not necessarily be able to obtain a relevant WRAP-generated QCC for all of specific resources. Calpine Solutions’ understanding is that WPP and/or the WRAP Program Operator will calculate unique QCC values for certain resources based on a Joint Capacity Accreditation Form and supporting attestation submitted by the WRAP participant. Thus, Calpine Solutions recommends that Staff and/or the Commission publish WRAP-based PRM and QCC values for use in the State Program and not update those values sooner than one year prior to the applicable forward showing in the

¹⁹ Calpine Solutions’ Comments, Docket No. UM 2143, pp. 12-13 (June 12, 2023).

²⁰ Calpine Solutions’ Comments, Docket No. UM 2143, pp. 14-15 (June 12, 2023).

State Program.

4. Compliance Resources (Draft Rules § 5.f.)

Calpine Solutions recommended that Staff’s Draft Rules clarify that a State Participant is not bound to use the exact same resources included within its forward showing when the operational period occurs if doing so no longer makes sense from an economic standpoint and load can be reliably served otherwise.²¹ Staff did not address this issue at the workshop or make any clarifying revisions to Staff’s Revised Draft Rules. Calpine Solutions continues to recommend including this reasonable clarification in the rules or elsewhere.

5. Transmission Requirement (Draft Rules § 5.h.)

Calpine Solutions’ prior comments made two distinct recommendations for the State Program’s transmission requirement, and additional revisions are needed with respect to both points.

a. Permissible Forms of Firm Transmission

First, Calpine Solutions recommended that “firm transmission rights” should be defined in the State Program rules consistent with the description of firm transmission in the WRAP, which defines firm as “NERC Priority 6 or NERC Priority 7 firm point-to-point transmission service or network integration transmission service.”²² Staff expressed interest in adopting this recommendation at the workshop and appears to have intended to do so in the rules, but a further clarification is still necessary. Staff’s Revised Draft rules inserted the descriptor “firm or conditional firm” in § 5.h., but did not use the terms “NERC Priority 6 or NERC Priority 7.” This

²¹ Calpine Solutions’ Comments, Docket No. UM 2143, pp. 15-16 (June 12, 2023)

²² Calpine Solutions’ Comments, Docket No. UM 2143, pp. 16-17 (June 12, 2023); *see also* WRAP Tariff, § 16.3.

change in wording from that used in the WRAP tariff could result in ambiguity as to whether secondary network integration transmission service qualifies in the State Program as it clearly does in the WRAP. Secondary network transmission is NERC Priority 6,²³ but is not necessarily the same as “conditional firm,” which is typically a point-to-point transmission product not a network transmission product. Thus, Calpine Solutions recommends use of the terms “NERC Priority 6 or NERC Priority 7” to avoid potential misunderstandings and confusion.

b. Waiver/Exceptions Process

Second, Calpine Solutions recommended that the State Program rules should clearly define the transmission waiver process, which should provide adequate time to act, such as 60 days not just 30 days, if Staff and/or the Commission deny the LSE’s waiver request.²⁴ Staff’s Revised Draft Rules contain no edits to clarify the exceptions/waiver process, except to clarify that the “expected counterflow” exception applies when any party is the source of the counter flow. Staff’s narrative description indicates that Staff’s intent is that the State Participant’s submittal would “discuss how transmission constraints or acquisitions on the four-year horizon feed into the resource adequacy concerns or actions in a chapter devoted to resource adequacy.”²⁵ Staff also requested comments on how to reword the rules to reflect that intent.

In response to Staff’s request, Calpine Solutions continues to recommend that the State Program rules should provide additional guidance as to how a State Participant would submit its transmission exceptions/waiver request (e.g., informally to Staff, or through a formal filing to the Commission) and provide some assurance that the waiver/exceptions proposal will be accepted

²³ See, e.g., PGE’s Network Integration Transmission Service Business Practice, p. 9, available at <http://www.oasis.oati.com/pge/> (“Secondary Network Service has a NERC 6 curtailment priority, identified on electronic tags as 6-NN”).

²⁴ Calpine Solutions’ Comments, Docket No. UM 2143, pp. 17-18 (June 12, 2023).

²⁵ Staff’s Revised Draft Rules, Docket No. UM 2143, p. 2 (June 30, 2023).

or rejected with enough advance notice, at least 60 days, prior to the deadline to cure any deficiencies found. To the extent Staff’s Revised Draft Rules propose use of the same 30-day review period that would apply to any other deficiency in § 5.i. (which appears to be the case), that is not sufficient. In the WRAP, the exceptions process is still being developed in business practices, but there is a 60-day cure process for any deficiency in the LSE’s forward showing (transmission or otherwise) before penalties could apply.²⁶ The intent of a cure period is to “promote identification and correction of any deficiencies to help ensure that the required resources are arranged and in place for the relevant season.”²⁷ Cutting the WRAP’s 60-day period in half—especially for the transmission exceptions—will make the State Program even more difficult without any identified reason.

6. Fines and Sanctions (Draft Rules § 5.j.)

Calpine Solutions’ prior comments recommended that the rules should not include the specter of ESS decertification for deficient forward showing in the State Program, or at least the rules should clarify the extreme circumstances that would warrant ESS decertification.

Staff made no changes to the Staff’s Revised Draft Rules regarding the option of ESS decertification. However, Staff’s Revised Draft Rules (§ 5.k.) did clarify that the fines in the State Program will be based on the prevailing methodology in the Regional Program. Staff also stated in its narrative description of the rules that decertification would be used “only as a last resort option for especially non-compliant ESSs or when other corrective measures are unsuccessful.”²⁸ Staff’s narrative description also requested comments proposing language in

²⁶ WPP’s Submittal Letter, FERC Docket No. ER22-2762, p. 26 (Aug. 31, 2022).

²⁷ *Id.*

²⁸ Staff’s Revised Draft Rules, Docket No. UM 2143, p. 2 (June 30, 2023).

the rules to guide when ESS decertification would be an available penalty.

Calpine Solutions appreciates Staff's clarification that decertification will only be used as a last resort when other corrective measures fail but continues to recommend deletion of the specter of ESS decertification from the RA rules unless a corresponding penalty option will also be included for the public utility LSEs. If the rules will continue to include the option of decertification, Calpine Solutions recommends the following edit to §5:

j. A State Participant whose plan is not approved ~~60~~ 30 days after the Commission identified deficiencies shall be subject to a fine ~~, revocation of Electric Service Supplier certification,~~ or some other appropriate penalty determined by the Commission. The fine shall be assessed on a per-MW basis for monthly capacity or transmission deficiencies.

k. The Commission shall base its fine on the prevailing fining methodology of a Qualified Regional Program.

l. A State Participant's repeated violations the State Program rules which compromises resource adequacy in the relevant balancing authority may be cause for the revocation of that Load Serving Entity's authorization to operate as an ESS or electric company in the State. The Commission will provide notice and opportunity for the affected Load Serving Entity to respond to a proposed revocation before making a final decision on revocation.

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