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June 10, 2019

## *Via Electronic Filing*

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High St. SE, Suite 100  
Salem OR 97301

Re: In the Matter of ALLIANCE OF WESTERN ENERGY CONSUMERS  
Petition for a General Investigation into Long-Term Direct Access Programs.  
**Docket No. UM \_\_\_\_\_**

Dear Filing Center:

Please find enclosed the Alliance of Western Energy Consumers' Petition for a General Investigation into Long-Term Direct Access Programs

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch

Jesse O. Gorsuch

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM \_\_\_\_\_**

In the Matter of	)	
	)	
ALLIANCE OF WESTERN ENERGY	)	PETITION OF THE ALLIANCE OF
CONSUMERS	)	WESTERN ENERGY CONSUMERS
	)	FOR A GENERAL INVESTIGATION
Petition for a General Investigation into Long-	)	INTO LONG-TERM DIRECT ACCESS
Term Direct Access Programs.	)	PROGRAMS
_____	)	

**I. INTRODUCTION**

Pursuant to OAR § 860-001-0400(2), the Alliance of Western Energy Consumers (“AWEC”) hereby petitions the Oregon Public Utility Commission (“Commission”) to open a general investigation into long-term direct access programs. As used in this Petition, AWEC defines a “long-term direct access program” as one that allows a customer to purchase its electric commodity from an Electricity Service Supplier for an indefinite period. This includes Portland General Electric Company’s (“PGE”) Schedules 485, 489, and 490, and PacifiCorp’s Schedule 296. AWEC proposes to focus this investigation on long-term direct access programs because they have been the primary source of litigation over direct access issues, they are the most substantial form of direct access a utility can offer, and, as a consequence, they have the potential to most significantly impact both participating and non-participating customers. If, however, the Commission believes that a broader investigation into direct access programs more generally is warranted, AWEC would not object.

The time is appropriate for AWEC’s requested investigation, given the significant disputes over long-term direct access programs in recent years. In addition, stakeholders and the Commission have contemplated such an investigation occurring now. In Order No. 19-129, which modified the Commission’s final order in Portland General Electric Company’s (“PGE”) 2018 general rate case that approved a stipulation resolving issues with PGE’s long-term direct access program, the Commission noted that “the stipulating parties have agreed to review and investigate direct access issues over the next two years.”<sup>1/</sup> PacifiCorp, in its most recently completed Transition Adjustment Mechanism filing, agreed as part of a stipulation resolving most issues in that case “not to oppose a party’s request for a generic investigation into the company’s five-year direct access program.”<sup>2/</sup>

Further, the Commission has focused attention recently on ensuring that utilities can adapt to the changing energy landscape.<sup>3/</sup> Direct access provides flexibility for large customers that are sufficiently sophisticated about their energy supply to obtain this type of adaptability with respect to their own loads. Some of AWEC’s members want this flexibility, which being a cost-of-service customer cannot provide, while others want the rate predictability and stability of being a bundled service customer. As an organization whose members include both direct access and cost-of-service customers, therefore, AWEC’s primary goal with respect to direct access is to advocate for programs that benefit and do not harm both sets of customers. AWEC firmly believes that this goal is achievable. Developed appropriately, direct access has

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<sup>1/</sup> Docket No. UE 335, Order No. 19-129 at 19 (Apr. 12, 2019). This modified final order was issued after the Commission granted in part and denied in part AWEC’s petition for reconsideration of the Commission’s original final order in UE 335.

<sup>2/</sup> Docket UE 339, Order No. 18-421, Appen. A at 7.

<sup>3/</sup> See, e.g., Commission process pursuant to SB 978.

the potential to benefit not only participating customers, but also non-participating customers. Such an investigation, therefore, is needed, and is needed now to ensure that direct access programs are designed to be durable, successful, and to work for all customers, both participating and non-participating, going forward.

## II. PETITION

### A. There is a near-term need for a direct access investigation.

The direct access law imposes upon the Commission the dual obligations to (1) “ensure” that the “provision of direct access to some retail electricity consumers must not cause the unwarranted shifting of costs” to non-participating customers, and (2) to “develop[] policies to eliminate barriers to the development of a competitive retail market structure.”<sup>4/</sup> These dual obligations require the Commission to approve, and potentially balance, direct access programs in a manner that expands market competition while simultaneously protecting non-participating customers from any negative effects of this competition. To this end, the Commission committed in its final report to the Legislature, pursuant to SB 978, to “[e]ncourage customer options that are fully and accurately valued.”<sup>5/</sup>

Given recent conversations around direct access in other dockets, it is clear that few, if any, stakeholders are satisfied that the direct access programs in place today are meeting these objectives. For instance, some stakeholders have argued to expand eligibility in existing long-term direct access programs.<sup>6/</sup> Others have argued to further restrict them.<sup>7/</sup> Some

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<sup>4/</sup> ORS 757.607(1), 757.646(1).

<sup>5/</sup> OPUC, SB 978: Actively Adapting to the Changing Electricity Sector at 21 (Sept. 2018), available at: <https://www.puc.state.or.us/Renewable%20Energy/SB978LegislativeReport-2018.pdf>.

<sup>6/</sup> Docket UE 335, AWEC/200, Mullins/45-46; Albertsons-Safeway/100; Calpine Solutions/100, Higgins/22-24; NIPPC/100, Fitch-Fleischmann/13-14.

<sup>7/</sup> Id., PGE/2500; CUB/400.

stakeholders have argued that direct access has benefitted cost-of-service customers,<sup>8/</sup> while others have argued that cost-of-service customers are being harmed by direct access, or may be in the future.<sup>9/</sup> Stakeholders have raised questions about whether utilities should be planning for customers currently on long-term direct access programs or, conversely, planning for cost of service customers to go onto such direct access programs in the future.<sup>10/</sup> Some stakeholders have argued that direct access provides capacity benefits to cost-of-service customers,<sup>11/</sup> while others have argued that cost-of-service customers subsidize direct access customers' capacity needs.<sup>12/</sup> The Commission itself has raised questions about direct access, including the “unknown negative potential impacts associated with large numbers of customers exiting the system” and questioned whether there are any “impacts of reduced cost-of-service load due to direct access on the many system improvements that cost-of-service customers are relied upon to finance.”<sup>13/</sup> This general uncertainty and disagreement over, and dissatisfaction with, the state of direct access warrants an investigation.

The fact that there is so much disagreement over the costs and benefits of long-term direct access programs is in part a function of the fact that the Commission has not investigated these programs in any depth for many years, leaving them largely static as the energy landscape has continuously evolved. The last time the Commission held a general investigation into direct access was 2012, in UM 1587, and that docket was limited to issues

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<sup>8/</sup> Id., AWEC/500, Mullins/4-13; Calpine Solutions/100, Higgins/17-19.

<sup>9/</sup> Id., PGE/1300, Macfarlane-Goodspeed/39-41; CUB/400; ADV 919, PGE Adv. No. 19-02 (Feb. 5, 2019).

<sup>10/</sup> ADV 919, PGE Adv. No. 19-02 at 2-3; LC 66, Initial Comments of Bradley G. Mullins for ICNU at 11 (Jan. 24, 2017).

<sup>11/</sup> LC 66, Initial Comments of Bradley G. Mullins for ICNU at 11; UE 335, AWEC/500, Mullins/4-10; Calpine Solutions/100, Higgins/22-24.

<sup>12/</sup> ADV 919, PGE Adv. No. 19-02 at 6-7.

<sup>13/</sup> Order No. 19-129 at 19.

related to franchise fees and consideration of a new direct access program for customers over 10 MW modeled on Puget Sound Energy's Schedule 449.<sup>14/</sup> A truly comprehensive investigation into direct access has not occurred since 2004 in UM 1081.

At least two additional reasons warrant an investigation in the near term. First, eligible customers have limited long-term direct access options that are rapidly becoming more limited. Since the Legislature adopted direct access in 1999, there has been only one program that has successfully contributed to the development of a competitive market in Oregon – PGE's long-term direct access program in which customers pay five years of transition adjustments based on the difference between market prices and PGE's costs, and may then remain on the market permanently. This program was developed through a series of workshops and approved in 2002 through a tariff filing, not through a contested case process with an evidentiary record.<sup>15/</sup> Moreover, as the Commission is aware, this program is reaching its 300 average MW cap and may, therefore, soon no longer be an option for customers (and, indeed, is not an option now for some customers who exceed the remaining space under the cap).

PacifiCorp's companion program, meanwhile, has been largely unsuccessful at "eliminating barriers to the development of a competitive retail market."<sup>16/</sup> AWEC understands that this program has attracted only a single participant since its inception in 2015. This is due primarily to the fact that PacifiCorp's transition adjustments include ten years' worth of fixed

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<sup>14/</sup> Docket UM 1587, Order 12-500 (Dec. 30, 2012).

<sup>15/</sup> PGE Adv. No. 02-17 (Oct. 2, 2002).

<sup>16/</sup> ORS 757.646(1).

costs rather than five, making direct access uneconomic for most customers. Litigation over certain aspects of PacifiCorp's program continues at the Court of Appeals.<sup>17/</sup>

Second, PGE and PacifiCorp are likely to face near-term capacity constraints as coal-fired generation in the region retires, and an increasing need for renewable resources to meet the State's renewable portfolio standard. Under the right circumstances, direct access provides a least-cost, least-risk means of addressing a utility's projected capacity and renewable energy needs. If direct access can help delay avoid higher-cost utility investments in new generation, for which cost-of-service customers are responsible, this would provide an economic benefit to those cost-of-service customers. Such customers may lose a near-term opportunity, therefore, if the Commission does not conduct the requested investigation. At the same time, some stakeholders have noted forecasts of reduced capacity in the region and questioned the extent to which increasing market participation could impact this capacity position.<sup>18/</sup> An evidentiary-based determination of these issues through a robust investigation is warranted.

**B. The Commission should open this investigation to ensure viable long-term direct access programs that work for both participating and non-participating customers.**

The recent history of litigation over long-term direct access demonstrates that there are differing perspectives on the costs and benefits of direct access, and to whom they accrue. Whether or not a particular argument or proposal ultimately is evidentially supportable, each of those perspectives is based on positions that deserve to be considered and, if necessary, addressed in long-term direct access programs going forward. Thus, based on the above

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<sup>17/</sup> Court of Appeals Docket No. A161359.

<sup>18/</sup> Commission NW Regional Adequacy Outlook Workshop (May 28, 2019).

considerations, AWEC proposes that the Commission consider, at a minimum, the following questions in the investigation.

1. What are the potential benefits to and potential harms from long-term direct access offerings?
  - a. How can long-term direct access programs be structured to maximize these potential benefits?
  - b. How can long-term direct access programs be structured to minimize or eliminate these potential harms?
2. What constitutes “unwarranted” cost-shifting?
  - a. Are PGE’s and PacifiCorp’s current long-term direct access programs structured in a way that avoids unwarranted cost-shifting?
  - b. If not, how should these programs be structured to avoid unwarranted cost-shifting?
3. What limits, if any, should be placed on the ability of a customer to participate in a long-term direct access program?

This list is not intended to be exhaustive, and AWEC believes other parties to the investigation should be allowed to raise additional issues.

**C. Additional Information Required by OAR 860-001-0400**

Pursuant to OAR 860-001-0400(2), AWEC’s contact information is:

Alliance of Western Energy Consumers  
818 SW 3rd Ave., #266  
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AWEC will be represented in this proceeding by Davison Van Cleve, P.C. All documents relating to this proceeding should be served on AWEC’s attorneys and consultant at the following addresses:



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### **III. CONCLUSION**

Recent litigation over direct access issues in various dockets has revealed a general dissatisfaction on the part of all stakeholders – customer groups, utilities, direct access providers, and the Commission itself – with the current state of direct access in Oregon. Moreover, as the Commission has recognized on more than one occasion, the energy landscape is rapidly changing. The Commission has taken steps to consider and address these changes through the SB 978 process, its pending docket on distribution system planning, and others. Direct access has a role to play in this broader conversation both in its ability to enable participating customers to actively manage their electricity supply and its implications on future utility resource needs and costs for non-participating customers. The Commission, therefore, should open a general investigation into long-term direct access programs.

Dated this 10th day of June, 2019.

Respectfully submitted,

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