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February 14, 2022

Via Electronic Filing

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

Re: Docket No. AR 651

Dear Filing Center:

Please find enclosed the Comments of the Alliance of Western Energy Consumers in the above-referenced docket.

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

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 651

In the Matter of)
)
Rulemaking Regarding Direct Access Including) COMMENTS OF THE ALLIANCE OF
2021 HB 2021 Requirements.) WESTERN ENERGY CONSUMERS
)
)
_____)

I. INTRODUCTION

The Alliance of Western Energy Consumers (“AWEC”) submits the following comments in the above-referenced docket regarding Staff’s Straw Proposal filed January 12, 2022. Staff’s Straw Proposal addresses Long Term Direct Access (“DA”) Programs and presents “policy positions for topics within the scope of AR 651.”^{1/} Staff’s Straw Proposal specifically addresses the following topics: publicly available pricing, caps and behind the meter (“BTM”) load growth, non-bypassability, provider of last resort (“POLR”), and HB 2021 electricity service suppliers (“ESS”) reporting and disclosure requirements. The comments below address caps and BTM load growth, non-bypassability, and POLR requirements. While AWEC is not commenting on the other topics in Staff’s Straw Proposal at this time, AWEC reserves the right to take a position on any or all of these other topics as this rulemaking progresses.

^{1/} Docket No. AR 651, AR 651 Workshop Announcement (Jan. 13, 2022).

II. COMMENTS

A. Caps and BTM Load Growth

Per Staff’s Straw Proposal, “[t]he Commission will set DA caps, if implemented, in the UM 2024 or other contested case process. The October 1, 2021 Memorandum requires discussion of firmness of caps. To the extent that caps are implemented in a future contested case, Staff proposes that overall direct access caps will be recalculated each year prior to the annual election window in order to determine availability under the cap. Caps would be updated to be responsive to the ongoing risks of the program.”^{2/} Generally, AWEC believes that direct access programs should be structured such that caps are unnecessary.

AWEC concurs with Staff that any determination regarding DA caps should take place in UM 2024 or another contested case proceeding. Therefore, AWEC recommends that no language be included in rules that addresses DA caps in the event they are ultimately adopted. Not only does rule language at this time potentially presume a DA cap, which could influence party positions and the Commission’s decision in UM 2024, it also could require additional rulemaking process to undo any adopted language if the Commission ultimately agrees that a cap on DA programs is unnecessary. However, if it is ultimately determined that language regarding DA caps is necessary, AWEC suggests the following language be added: “to the extent caps are implemented...” to ensure that a presumption of a DA cap is avoided.

Staff further states that “[r]egarding BTM load growth, Staff views this issue as tethered to the existence and size of DA caps overall. Staff is amenable to accommodating BTM

^{2/} Docket No. AR 651, AR 651 Workshop Announcement, at 2 (Jan. 12, 2022).

load growth assuming all risks, including cost-shifting concerns, are otherwise addressed through transition charges, Resource Adequacy [(“RA”)], etc.”^{3/} AEWC does not oppose Staff’s position on BTM load growth.

B. Non-Bypassability

Staff states that “[n]on-bypassable charges are those charges that may not be avoided by the transition to direct access.”^{4/} Staff further proposes to define non-bypassable charges as “costs that the legislature directs to be recovered by all customers as well as costs determined by the Commission to be associated with implementing public policy goals related to reliability, equity, decarbonization, resiliency, or other public interests.”^{5/} AWEC does not oppose defining non-bypassable charges as costs that the legislature directs to be recovered by all customers. However, Staff’s proposal that non-bypassable charges be defined to also include costs associated with “implementing public policy goals related to reliability, equity, decarbonization, resiliency, or other public interests” is concerning. Such terms are vague, and simultaneously too broad and too narrow. There is no clear definition of what constitutes a “reliability” cost, and some such costs may be made directly for the benefit of cost-of-service customers, for which DA customers should not pay. Similarly, Oregon’s Renewable Portfolio Standard (“RPS”) is arguably a cost associated with “decarbonization”, but ESSs are subject to their own RPS requirements, and AWEC does not understand Staff to propose that DA customers should pay for renewable generation the utilities acquire to meet the RPS. At the

^{3/} Id.
^{4/} Id.
^{5/} Id.

same time, there could be costs the utilities incur that do not clearly fit into any of the identified buckets in Staff's Straw Proposal but that would appropriately be passed on to DA customers.

As a result of Staff's language, therefore, it would be impossible to determine what costs would be included as a non-bypassable charge, which would defeat the purpose of crafting rule language in the first place. AWEC does not envision a scenario in which rule language will clarify all instances in which a cost is appropriately non-bypassable, and additional discussion and potentially litigation on discrete new costs is likely unavoidable. But rule language should be sufficiently precise to narrow any areas of disagreement such that it occurs within the clearly defined boundaries of the rule.

AWEC continues to support the language it proposed in its August 23, 2021 straw proposal, along with the statutory requirements Staff identified. That is, non-bypassable charges should be those specifically required by statute to be non-bypassable, as well as "public policy" costs, which are defined to be costs that do not confer a demonstrable electric system benefit on some customers over others and are components of a program required by law or regulation.

Finally, Staff proposes that "[n]on-bypassable charges should be allocated to a DA customer in the same method as a [cost of service ("COS")] customer of similar size and load profile."^{6/} AWEC recommends that additional language be included to specify that any charges that are not bypassable be allocated based on total revenues. If a cost is attributable to a public policy where no particular customer class benefits, the cost is more akin to a tax and should therefore be treated as such.

^{6/} Docket No. AR 651, AR 651 Workshop Announcement, at 3 (Jan. 12, 2022).

C. Provider of Last Resort

AWEC agrees with, and supports, Staff's Straw Proposal with respect to a utility's POLR obligations. Specifically, AWEC agrees that a RA requirement for ESSs will substantially mitigate any POLR risk the utilities have, and that a separate capacity charge is unnecessary and unwarranted. AWEC also agrees that preferential curtailment of DA customers returning to COS on an emergency basis could be warranted if operationally feasible, but only if there is no market energy to serve these customers. Otherwise, an emergency service tariff, with appropriate adders to cover all of the utilities' costs in providing emergency service, should be utilized.

III. CONCLUSION

AWEC appreciates the opportunity to comment on Staff's Straw Proposal and looks forward to further engaging with stakeholders on these issues.

Dated this 14th day of February, 2022.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Corinne O. Milinovich

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