Oregon Citizens' Utility Board
610 SW Broadway, Suite 400
Portland, OR 97205
(503) 227-1984
www.oregoncub.org

February 3, 2023

Via electronic filing

Madison Bolton
Public Utility Commission of Oregon
201 High St. SE
Salem, OR 97301

Re: ***AR 651 – Comments of the Oregon Citizens' Utility Board on Staff's Division 38 Preferential Curtailment Rules Updated Proposal***

Dear Mr. Bolton:

The Oregon Citizens' Utility Board (CUB) appreciates the opportunity to provide comments on Staff of the Public Utility Commission of Oregon's (Staff) updated preferential curtailment rules proposal, circulated on December 16, 2022 and discussed at the January 6, 2023 workshop in this proceeding. CUB thanks Staff for its leadership and vision in this proceeding and appreciates the hard work of all stakeholders to date. These comments will address preliminary considerations regarding any potential preferential curtailment policy before addressing specific provisions updated additions to in Staff's draft rule language. These comments seek to address issues CUB has not yet weighed in on rather than reiterating CUB's November 18, 2023 comments.

Preferential Curtailment and Contractual Curtailment

CUB remains concerned about the viability of a preferential curtailment policy, including whether an investor-owned utility (IOU) would actually curtail large customer load. These comments are detailed in CUB's November 18, 2023 pre-filed comments in this matter, and CUB incorporates them here by reference.

As a means to assuage concerns related to the feasibility of preferential curtailment, the Alliance of Western Energy Consumers (AWEC) has proposed that:

> [c]oncerns related to preferential curtailment, specifically reliability and cost concerns may be resolved through the implementation of contractual curtailment, rather than physical curtailment. Under a contractual curtailment structure, [direct access (DA)] customers would be contractually obligated to self-curtail in the event of market failure or face financial penalties.[1]

[1] AR 651 – AWEC Comments on POLR and Preferential Curtailment at 6 (Nov. 18, 2022).

CUB appreciates AWEC's effort to find a solution to address provider of last resort (POLR) risk through a unique means. However, CUB shares concerns voiced by Portland General Electric Company (PGE) about the feasibility of such a program. As PGE notes, while the "financial penalties" may be adequate to ensure self-curtailment, there is no guarantee that a returning DA customer would actually self-curtail.[2] Further, if a DA customer subject to contractual curtailment actually incurred penalties, nonparticipating cost-of-service customers could have already been subject to a deterioration in service.[3] Sufficient ambiguity exists in AWEC's proposal to render it an unworkable solution to address POLR issues, in CUB's opinion.

Curtailable and Non-Curtailable Customers

CUB agrees with PacifiCorp that, while a sound preferential curtailment policy may help mitigate cost-shifting, it does not fully address cost-shifting in most instances.[4] In order to comply with the Public Utility Commission of Oregon's (Commission) legally binding obligation to ensure that the provision of DA to some retail electricity customers not cause the unwarranted shifting of costs to other retail electricity customers, returning DA customers must be responsible for any costs that they drive onto the system.[5] The costs and risks brought by returning DA customers (whether curtailable or non-curtailable) to nonparticipating customers can be theorized to a degree, but they remain largely unknown due to prevailing market prices at the future time of return, necessary system upgrades, and other factors.

Caps on the total number of both curtailable and non-curtailable customers can help mitigate these costs and risks. As PGE notes:

> [c]aps are an essential tool to help mitigate the potential for cost shifting and unplanned load shifts as they place limits on "unknown and unknowable" system impacts and on the amount of load that can return on short notice that PGE is then required to serve with emergency default services as POLR.[6]

CUB believes it is appropriate for the Commission to set caps on the levels of both non-curtailable and curtailable DA customers. However, since the record in this proceeding demonstrates differing opinions regarding the level of caps and minimum customer size thresholds, these issues can be addressed in the contested phase of this proceeding. Therefore, should Staff seek to solidify some portion of the rules before the contested case phase, CUB recommends an edit to Staff's proposed OAR 860-038-0290(3) to allow that the Commission may establish a cap on both non-curtailable **and** curtailable direct access load.

[2] AR 651 – PGE's Comments on Staff's Preferential Curtailment Proposal at 8 (Nov. 18, 2022).
[3] *Id*. at 8-9.
[4] AR 651 – PacifiCorp's Comments on Staff's AR 651 Draft Rule Revisions at 6 (Nov. 18, 2022).
[5] ORS 757.607(1).
[6] AR 651 – PGE's Comments on Staff's Preferential Curtailment proposal at 2 (Nov. 18, 2022) citing UE 335, Order No. 19-128.

OAR 860-038-0920(5)

As drafted, this provision requires IOUs to not preferentially curtail customers if it is infeasible to do so or curtailment would negatively affect the electric system's reliability. While this section previously also required IOUs to plan for and acquire capacity to account for a DA customer's potential return to the electric system, that language has been stricken from the rule.

CUB supports Staff's alteration to this rule language. As Staff notes, a cap on non-curtailable load is likely a less costly tool to manage the risk posed by DA customer return to service in the event of electricity service supplier (ESS) default. Further, since ESSs are now likely to be subject to more stringent resource adequacy (RA) standards through the UM 2143 RA investigation and participation in the Western Resource Adequacy Program (WRAP), a cap on non-curtailable load represents a reasonable measure to mitigate risk for an event that is unlikely to occur.

CUB wants to avoid a scenario wherein the IOUs have over-built capacity on their system to serve a need that is unlikely to materialize. Neither DA customers nor nonparticipating cost of service customers have an interest in paying for capacity needed for potential return to service, and, as AWEC notes, imposing such a charge on DA customers that are not receiving a benefit may violate the DA law.[7] However, should the IOU have to acquire capacity when preferential curtailment is infeasible, the entirety of those costs must be borne by the DA customer returning to IOU service. AWEC supports a proposal detailed by PacifiCorp that would apply a capacity charge only to DA customers who return to service on less than the time required to return to cost of service.

CUB also believes this proposal is reasonable. The details of the charges and implementation of the proposal may need to be worked out in a contested case setting, but CUB largely supports the direction Staff has laid out on this issue. The core concept of CUB's advocacy on this issue remains unchanged—any costs needed to serve DA customers who have returned to cost of service or have experienced ESS default that are incremental to transition charges already collected must be paid for only by the returning DA customers. Under the Commission's obligation to prevent unwarranted cost shifting, cost of service customers must be held harmless. If a preferential curtailment policy is enacted, DA customers must be responsible for all direct and indirect costs associated with its administration

OAR 860-038-0290(6) – Market Purchases and Excess Generation

CUB appreciates Staff's consideration of stakeholder feedback to develop a rule with a more explicit definition of "excess generation." In its current form the rule states:

[7] *See, e.g.,* AR 651 – AWEC Comments on POLR and Preferential Curtailment at 5 (Nov. 18, 2022) ("[I]t is AWEC understanding that some parties continue to support the proposal that DA customers be subject to a capacity charge associated with their potential return to service – that is, this charge would apply even when the customer is taking DA service. AWEC has consistently opposed this concept, and continues to do so, as it violates both the DA law by requiring DA customers to pay for utility resources, and principles of cost causation, requiring DA customers to pay for resources from which they receive no benefit.").

> If an ESS is no longer providing service, the electric company must make best efforts to serve a returning curtailable consumer with market purchases or the electric company's excess generation. Excess generation must be generation that is beyond any requirements to serve cost of service load, to comply with reliability standards, or to meet contractual obligations related to contingency reserves.

CUB continues to support the definition that PacifiCorp detailed earlier in its comments. As CUB has detailed in prior comments, any generation not actively used to serve COS customers is typically optimized and sold into various markets to create system benefits. If used for a returning DA customer instead, the ability to value this generation to ensure no costs are shifted (which includes avoided benefits) would be quite difficult. Therefore, CUB believes PacifiCorp's proposed definition for "excess generation" of "in excess of energy that would otherwise be valuable to remaining customers" is an apt definition that would protect COS customer interests.[8]

Ambiguity remains in the rule as drafted by staff. For example, the definitions of both "best efforts" and "excess generation" require further refinement. Rather than creating a detailed rule at this time, it may be best to address these issues in the contested case phase of this investigation.

Potential for Demand Response

CUB does not inherently oppose Staff's proposal for a curtailable customer to enroll in demand response to further utilize curtailment as a resiliency and grid flexibility tool. Specifics about such programs may need to be addressed in the contested case phase of this proceeding. Again, CUB's interest is to ensure that such programs are designed in a manner to augment existing curtailment policies and that they are implemented so as to avoid any unwarranted shifting of costs.

Conclusion

CUB's principal interest in this proceeding remains upholding the legal requirement that no costs be shifted to nonparticipating COS customers. While Staff's draft rules contain key provisions that serve to protect COS customers, questions remain about how a preferential curtailment policy would be implemented in practice.

///

///

///

///

[8] AR 651 – PacifiCorp's Comments on Staff Report at 3-4 (Oct. 3, 2022).

Further, while CUB appreciates Staff's goal to create high level rules that may be subject to further refinement after the contested phase of this proceeding, the record demonstrates that some parties believe no rules should be set at this time. In order to provide Staff some guidance, CUB believes that issues addressed in rule that are largely agreed upon and/or do not require a fact-based inquiry may be promulgated into rule before the contested case. These rules can always be altered later. If there are rules where disagreement exists and/or require any level of fact-based inquiry, CUB recommends not creating rules around those issues at this time.

Sincerely,

Michael P. Goetz
Oregon State Bar No. 141465
General Counsel
Oregon Citizens' Utility Board
610 SW Broadway, Ste. 400
Portland, OR 97205
T. (503) 227-1984
C. (630) 347-5053
E. mike@oregoncub.org