

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

AR 651

IN THE MATTER OF

RULEMAKING REGARDING
DIRECT ACCESS INCLUDING 2021
HB 2021 REQUIREMENTS

COMMENTS OF
BROOKFIELD RENEWABLE TRADING AND
MARKETING LP

BROOKFIELD RENEWABLE TRADING AND MARKETING LP

Stephen Greenleaf
Senior Director of Regulatory Affairs and Policy, Western U.S.
Brookfield Renewable Trading and Marketing LP
1568 Oglala Street
South Lake Tahoe, CA 96150
(916) 802-5420

Dated: September 15, 2022

Steve.Greenleaf@brookfieldrenewable.com

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

AR 651

IN THE MATTER OF

RULEMAKING REGARDING
DIRECT ACCESS INCLUDING 2021
HB 2021 REQUIREMENTS

COMMENTS OF
BROOKFIELD RENEWABLE TRADING AND
MARKETING LP

I. INTRODUCTION & SUMMARY

Brookfield Renewable Trading and Marketing LP (“BRTM”) hereby submits the following comments on the Oregon Public Utilities Commission (“Commission”) Staff’s (“Staff”) straw proposal filed September 1, 2022. Representatives from BRTM will attend the Commission’s public hearing, and BRTM welcomes the opportunity to further explain its positions, as detailed below.

II. COMMENTS

a. Non-Bypassable Charges (OAR 860-038-0170)

BRTM supports the language submitted by the Northwest and Intermountain Power Producers Coalition (“NIPPC”) and the Oregon Citizen’s Utility Board (“CUB”) in an attempt to further improve Staff’s proposed rules related to non-bypassable charges. BRTM is pleased to see that Staff and other stakeholders were receptive to NIPPC and CUB’s proposal. Staff’s straw proposal is a reasonable compromise between the competing interests of the stakeholders who have participated throughout the informal rulemaking phase of this docket. BRTM proposes

several clarifying edits to the factors the Commission is to consider in determining whether a charge should be non-bypassable. Specifically, BRTM proposes the following revisions:

- (a) whether ~~it~~ the charge proposed to be non-bypassable is required by statute
- (b) whether ~~it~~ the charge proposed to be non-bypassable is an uneconomic cost of implementing a public policy goal such as those identified in ORS 469A.465 or similar public policy goals related to reliability, equity, decarbonization, resiliency or other public interest for which retail consumers served by electricity service suppliers otherwise would not meaningfully contribute.
- (c) whether or not ~~it~~ the utility action associated with the charge proposed to be non-bypassable confers a demonstrable electric system benefit on some customers over others
- (d) whether ~~it~~ designating the charge as non-bypassable is in the public interest
- (e) whether ~~it~~ the charge is necessary to be non-bypassable under the Commission's discretion in order to establish fair, just, and reasonable rates.

BRTM believes its proposed edits are noncontroversial and clarify exactly what the Commission should examine in its non-bypassability analysis.

b. Confidential Information Associated with ESS Reporting (OAR 860-038-0405)

BRTM largely supports Staff's proposed revisions to OAR 860-038-0405 regarding the protection of confidential information associated with ESS emissions reporting. Once again, the proposed language is largely identical to that submitted by NIPPC, CUB, and the Environmental NGOs, which BRTM supports. Similar to the proposed revisions to non-bypassable charges, BRTM believes that the clarified protections included in Staff's straw proposal appropriately balance the interests of stakeholders. At this time, BRTM does not propose additional revisions and looks forward to continued discussion.

c. Preferential Curtailment (OAR 860-038-0290)

Generally speaking, BRTM supports Staff's endorsement of preferential curtailment in the unlikely event that a direct access customer unexpectedly returns to utility service on an emergency basis. While the utilities have expressed concern related to costs and feasibility of preferential

curtailment, it is worth exploring preferential curtailment as a means of addressing the utilities' competing concern related to surprise capacity shortfalls. Below, BRTM recommends minor edits to the proposed preferential curtailment rules for Staff's consideration.

First, BRTM proposes the following changes to OAR 860-038-0290(2) and (3):

(2) If an ESS is no longer providing service, the electric company must attempt to serve the returning consumer with market purchases or the electric company's excess generation. Nothing in this section 2 limits the direct access customers of an ESS that is no longer providing service from obtaining service from a different ESS prior to receiving service from the electric company.

(3) If an ESS is no longer providing service and both market energy ~~and~~ excess generation is not available, the electric company may preferentially curtail returning nonresidential direct access consumers of that ESS. Nothing in this section 2 limits the direct access customers of an ESS that is no longer providing service from obtaining service from a different ESS prior to any preferential curtailment.

These proposed revisions make clear that a direct access customer is not required to take utility service if their ESS ceases to provide electric service. Rather, as a market participant, the direct access customer should be able to engage with a different energy supplier to serve their needs. This both recognizes the competitive market status of direct access customers and provides another layer of protection from capacity shortfalls that may result from the unlikely event of large load unexpectedly losing ESS supply. Further, BRTM's proposed edit to section (3) acknowledges that, as a provider of last resort, an electric utility should not have discretion in preferentially curtailing a customer unless both market energy and excess generation are unavailable. If either market energy or excess energy is available, the utility should be obligated to procure it regardless of whether it is available in the market or from in-house resources.

Second, BRTM recommends that sections (5)(a) and (b) be removed from Staff's draft rules. Currently, sections (5)(a) and (b) read:

(a) Where an electric company is exempt from providing preferential curtailment, the electric company will plan for and acquire capacity to account for a direct access consumer's potential return to the electric company's service.

(b) The electric company will design tariffs to collect charges from the direct access consumer that only recover the costs of the capacity investment and the generation that serves that consumer.

As acknowledged by Staff in its straw proposal, resource adequacy requirements are being considered in UM 2143. Adoption of resource adequacy obligations for all load serving entities serving load in Oregon will obviate the need for utilities to plan for or procure capacity for direct access customers that could, under extreme and unlikely circumstances, return to utility service. As Staff stated in its memo to the Commission only two months ago: "Staff proposed that the presence of a regional or state resource adequacy program ensures there is capacity for a Direct Access customer in extreme situations, therefore additional utility charges for backstop capacity are duplicative."¹ At this stage of this rulemaking, the appropriate protections for utilities from a returning direct access customer is to design an emergency default tariff that recovers the actual costs of providing service, not requiring utilities to procure duplicative or redundant capacity that is already procured by a direct access customer's ESS. Such an approach would unlawfully jeopardize the economics of competitive retail electric service in Oregon by charging a direct access customer twice for capacity, once for the capacity/supply procured by its ESS and second for capacity procured by the utility in the unlikely circumstances the customer needs to return to utility service and that customer cannot be preferentially curtailed.²

Therefore, BRTM respectfully requests that Staff remove section 5(a) and (b) from its proposed rules.

¹ Staff Memorandum, Docket No. AR 651, Item No. RM1, pp. 7-8 (July 12, 2022).

² The Commission must "eliminate barriers to the development of a competitive retail market between electricity service suppliers and electric companies." Or. Rev. Stat. § 757.646(1).

d. Direct Access Caps

BRTM appreciates Staff's effort to provide *potential* rule language regarding the circumstances under which caps may be appropriate and to seek comment on that language in an attempt to engage discussions now in order to better frame and guide discussions in the contested phase of the proceeding. As noted by staff, significant distance exists between parties on this issue. BRTM reiterates its position that caps are an unnecessary and blunt tool and that concerns about cost shifts to cost-of-service customers and other related matters are best addressed through transitional, resource adequacy, and other mechanisms and/or obligations. However, to the extent the Commission ultimately determines that adoption of a framework for implementing caps is necessary, it is BRTM's position that direct access caps should not be implemented unless there is a sufficient record establishing clearly that a cap is necessary based on well-established objective and transparent criteria, *i.e.*, a specific, transparent, and objective trigger. Put differently, there should be a presumption that caps are unnecessary unless there is a cognizable harm from an increase in direct access load that is transparently and objectively defined. Understanding that Staff's list of considerations is not proposed for inclusion in the rules, BRTM does not offer specific revisions.

Staff's straw proposal recommends a regular recalculation of caps to respond to ongoing risks. While BRTM does not think caps should be adopted, BRTM agrees that, should a framework for caps be implemented and caps triggered, a reconsideration and/or recalculation of the caps on an annual basis or upon petition is important. Such a review could eliminate the triggered caps or, if necessary, extend the existing caps or increase the caps, if the aforementioned triggering criteria is satisfied. That said, it is important that the Commission clarify that direct access load existing at the time the Commission determines a cap is necessary will be permitted to

continue to secure competitive supply and that caps will not be set at a level below the level of existing direct access load. BRTM notes that such cap reassessment proceedings are likely to be data and resource intensive, and thus cautions that an annual review process may impose a heavy burden on the Commission, Staff, and participants. BRTM also supports, in conjunction with the above cap process, Staff's proposal that petitions to exceed any triggered cap be addressed through an expedited 90-day process. Finally, BRTM also supports Staff's proposal that behind-the-meter ("BTM") load growth be accommodated. BRTM questions the need to limit such growth and believes that the basis and criteria for limiting BTM load growth be examined in the contested phase of the proceeding.

III. Conclusion

BRTM appreciates the thought and time put into developing the straw proposal and looks forward to engaging with Staff and other parties in the forthcoming rulemaking process.

DATED this 15th day of September, 2022.

/s/ Stephen Greenleaf

Stephen Greenleaf
Senior Director of Regulatory Affairs and Policy, Western U.S.
Brookfield Renewable Trading and Marketing LP
(916) 802-5420
Steve.Greenleaf@brookfieldrenewable.com

/s/ Austin W. Jensen

Austin W. Jensen – OSB 220547
Laura K. Granier
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202
Telephone: (303) 295-8000
awjensen@hollandhart.com
lkgranier@hollandhart.com

ATTORNEYS FOR BRTM

19778920_v1