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
Steve.Greenleaf@brookfieldrenewable.com

Dated: February 14, 2022

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 Utility Commission ("Commission") staff's ("Staff") docket strategy and straw proposal for the AR 651 Long-Term Direct Access Programs Investigation. These comments reiterate BRTM's comments expressed at Staff's January 26, 2022 workshop. In addition, these comments provide further clarity on BRTM's position on the various aspects of Staff's straw proposal. Representatives from BRTM will attend future workshops and welcome the opportunity to further explain its positions detailed below.

II. COMMENTS

a. Publicly Available Pricing

Staff's rulemaking straw proposal recommends that the Commission continue to require load serving entities ("LSEs") to provide indicative pricing on their websites. Staff's goal is to inform direct access ("DA") customers of the transition costs associated with moving to a different energy provider. While BRTM supports this broader goal, the practical implications of providing indicative pricing make publishing prices on an LSE's website largely unhelpful. Specifically,

those customers that transition to DA service are sophisticated entities that understand energy markets and associated costs. And these customers are all unique, making a one-size-fits-all approach impossible. Many DA customers have specific corporate requirements for energy service, while others may not. All DA customers' load profiles and physical locations differ, which has cost implications from a demand, energy, and transmission perspective. Accordingly, any indicative pricing will almost never be an accurate depiction of the true transition costs of moving from one provider to another. Further, requiring indicative pricing undermines competition. By allowing DA service, the Oregon Legislature intended to promote competition in energy markets.[1] Requiring LSEs to make pricing public undermines that goal by publicly disclosing competitively sensitive information. While protecting customers through transparency is a noble goal, sophisticated energy consumers taking DA service do not require the transparency generally afforded to the general public through publicly available tariffs.

Therefore, BRTM recommends that LSEs not be required to provide publicly available pricing. However, if Staff or the Commission is inclined to disagree, BRTM supports maintaining the Commission's current rule noting that indicative pricing is not binding.

b. Program Caps and Behind the Meter Load Growth

Consistent with the Administrative Law Judge's topic list for this proceeding, Staff's straw proposal includes reference to the "firmness" of caps. As many parties indicated during Staff's January 26, 2022 workshop, cap implementation should generally be reserved for the contested portion of this proceeding where factual investigations and determinations can be made. This

[1] Or Laws 1999, ch. 865, preamble.

makes it difficult to make meaningful progress with regard to caps given that the threshold issue of whether caps should be imposed at all is a contested case issue.

However, it may be possible to address the firmness of caps without expressing preference on cap implementation in the first instance. BRTM believes that this could be done by making any rule provision related to caps contingent on the Commission imposing or modifying a cap through Commission order. If no Commission cap is implemented, then the rules would lay dormant unless and until the Commission imposes a cap on DA service. Some aspects on the firmness of caps that could be explored outside of a contested case include the standard for evaluating whether caps can be exceeded, the frequency of updating caps, and whether a sunset of caps is appropriate.

With regard to exceeding any cap imposed, Staff proposed implementing a framework consistent with the 90-day Voluntary Renewable Energy Tariff ("VRET") process. BRTM understands the VERT process to require filings:

> that would be discussed and decided upon in a public meeting no later than 90 days after its submission to the Commission. Presumably, this would provide adequate time for Staff and stakeholder review for consistency with our orders and [any] conditions, including for examination of … the expansion's effect on its IRP and its current and planned portfolio of resources. Within that 90-day period, [the Commission] would expect to approve an expansion or determine that more examination is necessary, directing Staff to lead an investigation of the expansion proposal.

BRTM generally supports this 90-day framework; however, it lacks specific direction on the standard of review associated with such petitions and the ability of electric service supplier ("ESS") to access needed information. With regard to the standard of review, BRTM proposes that such petitions be afforded a presumption that exceeding any cap is consistent with state

policy.[2] Then, any intervenor could contest that presumption and would have the burden of demonstrating that exceeding the cap would result in harm to cost-of-service customers. Presumably, a contesting party would include the incumbent utility, which appropriately addresses BRTM's concerns regarding access to necessary information. Specifically, the information relevant to the public interest considerations of expanded caps is largely in control of the utility from which the new or existing DA customer takes or would take service. By employing a burden shifting framework, the Commission would be recognizing that the utility is in the best position to present information on harms to customers. However, to ensure that an ESS petitioning the Commission for expanded caps is on a level playing field with utilities who could petition to expand the cap themselves, BRTM requests that any rule require, at a minimum, the incumbent utility to make available to an ESS all information relevant to the ESS's application.

Second, to the extent the Commission imposes caps, BRTM supports Staff's recommendation that the caps be updated annually. Again, however, there should be some structure around this update requirement given the lack of transparency in utility loads. As such, utilities should be required to make annual informational filings with current load data in their annual Integrated Resource Plan updates pursuant to OAR 860-027-0400. This load data should include a utility's unbundled, standard offer service[3] but exclude DA customers served by an ESS. This would most accurately reflect the load on the respective utility's system in the given year for purposes of resetting any caps imposed by the Commission. Further, the resetting of a cap should not require ESSs providing DA service or utilities providing standard offer service to transition

[2] Indeed, this is consistent with the Legislature's directive to promote competition. *Id.*
[3] For ease of reference, BRTM refers to a utility's unbundled service as "standard offer service" consistent with Portland General Electric's direct access offerings. *See* Advice No. 18-05, No. E-18, Sheet No. 490, effective May 14, 2018; Advice No. 19-02, Sheet No. 689, effective September 9, 2020.

load already served through competitive pricing to traditional service. For example, in year one, presume a cap was set at 10% of load and an ESS served 5% of that load and the utility provided standard offer service to the other 5%. Then, in year two, a large traditional, bundled service customer closed its business, thereby decreasing system load. In this instance, neither type of competitive customers' remaining load should be impacted. Neither the ESS nor the utility should be required to return any of their competitive customers' load back to traditional service. This would create obvious contractual and equity issues. Thus, BRTM recommends that any reduction in load eligible for DA service operate only to reduce program participation to the extent open capacity exists in the program. If fully subscribed, then no new competitive purchasers could be added and the actual served load would only reduce once a competitive purchaser returns to traditional service.

Third, BRTM proposes a sunset to any caps imposed by the Commission. Any concerns related to cost shifting and resource adequacy ("RA") will be addressed in UM 2143. In the past, caps have operated largely to protect utility customers from a large amount of load shifting from DA service to utility service with insufficient notice to plan from an RA perspective. However, as noted in Staff's straw proposal, ESS participation in Oregon RA requirements is sufficient to guarantee service without separate provider of last resort ("POLR") charges. Absent demonstratable harms, a sunset provision is consistent with state policy regarding competition. To the extent that RA and/or cost-shifting concerns persist, such concerns are best addressed in UM 2143 or any successor proceeding.

Finally, Staff's straw proposal indicated that behind-the-meter-load growth is intertwined with DA caps, but Staff is amenable to allowing behind-the-meter load growth assuming all risks are addressed in transition charges and RA. BRTM agrees that behind-the-meter load growth

should be allowed to occur and that appropriate protections can be implemented via RA requirements. Limiting behind-the-meter load growth would impose barriers to an ESS's ability to compete as a DA provider. Specifically, if behind-the-meter load growth was subject to caps or otherwise limited, a customer with whom an ESS has a business relationship would have to choose between expanding their business or splitting service between their ESS provider and the incumbent utility, which could adversely affect investment in the state. Meanwhile, if the incumbent utility experienced behind-the-meter load growth, it would be permitted, indeed required, to serve that incremental load. Thus, caps or limits on behind-the-meter load growth only operate to guarantee a utility's service of new ESS load, or some portion thereof. However, this load was never planned for by the utility given that the DA customer's electric service is supplied by an ESS. It should be the obligation of the ESS to plan for behind-the-meter load growth, which, as Staff correctly points out, is a matter best considered in the ongoing RA proceeding.

Therefore, BRTM recommends that any rule provisions proposed related to caps be consistent with BRTM's comments above and be contingent on the Commission's imposition or modification of caps. Further, BRTM requests that any draft rule language permit behind-the-meter load growth without penalty or limitation.

c. Non-Bypassable Charges

Staff's straw proposal recommends defining 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." During Staff's January 26, 2022 workshop, several parties expressed concern with the specificity of this rule. BRTM shares these concerns.

First, BRTM recommends that "reliability" and "resiliency" be removed from the list of public policy goals. Or. Rev. Stat. § 757.020 requires utilities to provide safe and reliable service. *See also* ORS §§ 757.669, 758.405; OAR 860-023 *et seq.* This bedrock requirement of utility regulation should not be transformed into a public policy goal. Doing so not only waters down a utility's duty in a regulated monopoly, but it also runs the risk of allowing all utility investments to be considered a public policy investment. Protections against this latter risk are explained below.

Second, it is important to note that, traditionally, public purpose charges did not relate to resource procurement as much as they did to public programs, such as low-income assistance and commission or consumer advocate operating expenses. Over the past several decades, energy procurement and retirement decisions have looked more and more towards environmental goals, and rightly so. However, these goals all have a public policy focus, which, under Staff's definition, could be rolled into non-bypassable charges. In other jurisdictions in which BRTM operates, utilities have used non-bypassability as a mechanism to slowly chip away at the economics of DA service by pushing traditional cost-of-service costs onto DA customers through this public policy lens. An example of this occurring in Oregon includes Pacific Power's recent request to make coal plant decommissioning costs a non-bypassable charge.[4] While that case is ongoing, decommissioning costs of a plant have traditionally been recovered only from customers taking service from the utility at the time. By allowing a utility to spread these costs to those not taking electric service directly from the utility under the guise of public policy, the utility can make DA service progressively uneconomic.

[4] PacifiCorp Cost Recovery Adjustment and Coal Removal Mechanism, UM 2183, Application p. 6.

BRTM does not take issue with Oregon's aggressive environmental goals; indeed, it sought ESS certification with express understanding of Oregon's energy requirements and policy. However, to protect competition in the energy market, there must be protections against cost shifting through the use of non-bypassable charges. In fact, Oregon law demands it. Or. Rev. Stat. § 757.646(1) states:

> The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market between electricity service suppliers and electric companies. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies and prohibit preferential treatment, or the appearance of such treatment, by the incumbent electric companies toward generation or market affiliates.

The Commission is further required to "[m]inimize cross-subsidization between competitive operations and regulated operations." Or. Rev. Stat. § 757.646(2)(c). In protecting competition in the energy market, BRTM recognizes that the definition of non-bypassable charges may be illusive. However, protections can come in the form of ratemaking treatment and the collection of non-bypassable charges. Namely, BRTM recommends that non-bypassable charges collected by a utility be set at a level that prevents the utility from earning a return on investment. To allow a return on non-bypassable charges necessarily shifts costs from the regulated business to a competitive one. DA customers would be contributing towards utility shareholder profits despite taking service from an alternative provider and without giving the ESS an ability to administer a comparable program. This would undermine the Legislature's mandate to "eliminate barriers to the development of a competitive retail market between electricity service suppliers and electric companies."

Therefore, while BRTM supports assessment of non-bypassable charges to DA customers for true public policy purposes, such charges, if not carefully administered, pose significant risk

of costs shifting that will erode the competitiveness of DA service. As a result, BRTM recommends implementing the protections outlined above, at a minimum.

d. Provider of Last Resort

Staff's straw proposal takes the position that it would be duplicative to require ESS participation in RA requirements and also impose POLR backstop charges. Further, Staff's straw proposal supports utility backstop tariffs that reflect the actual costs incurred in the event backstop service is requested.

BRTM agrees with Staff on both of these points. By participating in Oregon's RA requirements, ESSs will necessarily demonstrate that they have the ability to serve their customers during grid-stressed events. In the extremely rare event that a DA customer requests backstop service, the cost of that service should be limited to the actual costs the backstop service incurs on the system, rather than operating to penalize. Further, as Staff points out, preferential curtailment would be the appropriate penalty should capacity be constrained to a point where a utility is unable to provide service to its customers as well as a DA customer requesting backstop service. While stakeholders discussed the feasibility of preferential curtailment at length during Staff's January 26, 2022 workshop, BRTM supports more in-depth analysis of the costs of doing so on a customer-by-customer basis. The most likely energy consumers to obtain electric service from an ESS are those with large loads with substantial transmission and distribution facilities already installed at or near their place of business, facilitating implementation of preferential curtailment.

Therefore, BRTM supports Staff's recommendation to not impose a POLR backstop service charge. However, utilities asked to provide backstop service should be permitted to implement a backstop tariff reflecting actual costs and should have the ability to preferentially

curtail DA customer loads to the extent capacity is constrained when and if backstop service is requested.

e. ESS Reporting and Disclosure Requirements

i. Filing Requirements

Staff's straw proposal includes a general framework for which ESSs are required to file reports and the timeline for doing so. BRTM generally supports these recommendations.

ii. Post-2027 Filing Contents

Staff's straw proposal expands on post-2027 filing contents. During Staff's January 26, 2022 workshop, stakeholders discussed the confidential treatment of filing information. BRTM reiterates its concerns with making competitively sensitive information publicly available. Specifically, load forecast data is not only competitively sensitive for ESSs but also the customers the ESS serves. Even aggregated data can be parsed to deduce approximate loads of individual DA customers when a DA customer has a large load in comparison to others or when there is a low number of DA customers during a reporting period. The same confidentiality concerns apply to cost and generation data as highlighted by Staff in its straw proposal. Accordingly, while BRTM takes no issue with the information proposed to be included in reports as detailed in Staff's straw proposal, BRTM requests that confidential treatment be given to competitively sensitive information. Certain information, such as load and generation data and cost estimates, should be given automatic confidential treatment by rule. Reporting providers should also have the ability to request that information not subject to automatic confidential protection be treated as confidential as detailed in OAR 860-001-0070.

Further, during Staff's January 26, 2022 workshop, a question was posed regarding how to define affordable within the context of Section 5(3)(c)(A) of HB 2021. While a precise definition

is likely to prove challenging to settle upon, being highly subjective, BRTM presents some general concepts for consideration in drafting proposed rules. First, in order to judge the affordability of actions, a consistent baseline must be set from which different portfolios or actions can be compared. BRTM proposes that actions be proposed on a net present value ("NPV") basis. All proposals or alternatives can be compared against each other, which will inform actual affordability analyses.

Second, this NPV analysis should only consider customer cost and not be offset by potential benefits. BRTM has seen stakeholders in other jurisdictions argue for the affordability of certain actions after offsetting qualitative benefits. However, this approach dilutes affordability analyses and misses the true concern of affordability: can the customer afford the cost as it appears on their bill. Related to whether a customer can afford to pay their bill, the Commission should also be mindful of effects of levelized rate impacts. Specifically, while the cost of service (or individual rate impacts) can be helpful, they are also misleading. The cost to serve customers does not impact customers on a "levelized" basis, as investment and rate impacts are lumpy and clean energy investments will be frontloaded. Thus, affordability should not be limited to a levelized cost analysis as near-term investments could lead to significantly higher costs for current customers than those years in the future.

iii. Outstanding Questions

Staff's straw proposal posed three questions for further consideration. These questions were:

1. How should the Commission verify that the ESS is likely to take "those actions" (by which BRTM understands the Staff to be referencing HB 2021 § 5(3)(c)(B) regarding ESS goals for actions to reduce greenhouse gas emissions)?
2. Should ESSs that serve customers in Pacific Power's service territory and Portland General Electric's service territory file separately for each utility?

3. How should the Commission monitor whether cost estimates are off?

With respect to the first question, Section 5(3) of HB 2021 requires that such information be supplied to the Commission in a report. Section 5(3) of HB 2021 does not provide for Commission action on submitted reports, and BRTM does not believe action is appropriate. Section 5(3)(c)(B) of HB 2021 simply requires that an ESS include goals for actions that could further reduce greenhouse gas emissions beyond reduction requirements. Accordingly, BRTM does not believe that verification by the Commission is appropriate. However, to track progress consistent with HB 2021, BRTM proposes that the Commission's rules require ESSs to report on progress, if any, on goals included in the prior report in the ESS's subsequent report without specific Commission action.

With regard to Staff's second question, BRTM recommends that ESSs only be required to file one report regardless of the number of incumbent utility service territories involved. As expressed at Staff's January 26, 2022 workshop, without specific reason for separate reports, administrative efficiency would be served by a single report.

Finally, BRTM understands Staff's third question to be referencing its reporting proposal to include an analysis of the dollars/MWh that a DA customer will be charged for service related to compliance with HB 2021 for each of the next three years. Similar to BRTM's comments related to Staff's first question, ESSs can include in subsequent reports how cost estimates differed from actual figures if known at the time.

f. Report Review Process

Staff's straw proposal included a process for Commission review of emissions reduction reports. BRTM is generally amenable to Staff's proposal. However, BRTM requests clarity on the time frame for Commission acceptance or rejection of a report and how soon an updated report

must be filed. It is not uncommon for commissions to request more information with little time before the reporting party's next annual filing on the same matter. In these instances, an updated report is of little value. Accordingly, BRTM supports defined time periods for Commission acceptance and ESS amendment, if required.

Last, Staff posed a question regarding whether the Commission should review compliance with HB 2021 in the same report and order as forward-looking goals. Consistent with BRTM's comments above, administrative efficiency counsels in reducing the number of filings. To the extent the Commission has issues with one aspect of a report, the Commission can elect to split its review of an ESS's compliance and goals into separate proceedings at that point; however, unless that happens, BRTM requests fewer filing requirements.

III. Conclusion

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

DATED this 14th day of February, 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/ Laura K. Granier

Laura K. Granier
Austin W. Jensen
Holland & Hart LLP
5441 Kietzke Lane, Suite 200
Reno, NV 89511
Telephone: (775) 327-3089
lkgranier@hollandhart.com
awjensen@hollandhart.com

ATTORNEYS FOR BRTM