

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. AR 651

In the Matter of Rulemaking Regarding Direct Access Including 2021 HB 2021 Requirements) )  
CALPINE ENERGY SOLUTIONS, LLC'S )  
COMMENTS ON STAFF'S STRAW )  
PROPOSAL )  
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**I. INTRODUCTION**

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits Comments on Staff’s Straw Proposal circulated on January 13, 2022.

Calpine Solutions is a retail energy supplier that serves commercial and industrial end-use customers in 18 states, the District of Columbia, and Baja California, Mexico. Calpine Solutions serves more than 15,000 retail customer sites nationwide, with an aggregate load in excess of 4,500 megawatts (“MW”). Calpine Solutions’ retail customers are located in the service territories of more than 55 utilities. In Oregon, Calpine Solutions is an Electricity Service Supplier (“ESS”), certified under Oregon law implemented by the Public Utility Commission of Oregon (“Commission” or “OPUC”), and currently serves customers in the service territories of PacifiCorp and Portland General Electric (“PGE”). Accordingly, Calpine Solutions has a strong interest in this proceeding.

Calpine Solutions appreciates the collaborative approach Staff has taken to development of its Straw Proposal in the informal phase of this rulemaking. Calpine Solutions looks forward to working with Staff and the other parties to develop rules that provide meaningful and nondiscriminatory opportunities for Oregon retail customers to purchase their energy supply from the competitive market through direct access service.

In general, Staff’s Straw Proposal is an excellent start to development of rules addressing the matters at issue, but some areas of the proposal are in need of revision. These Comments will provide Calpine Solutions’ position on each element of Staff’s Straw Proposal and make recommendations for improvements where appropriate.

## II. COMMENTS

The Comments below are organized in the order of presentation of Staff’s Straw Proposal.

### A. Reporting and Regulatory Issues

1. **Staff’s Proposal Regarding Publicly Available Pricing:** *To maintain transparency, utilities and ESSs should continue to provide indicative pricing on their websites that gives potential DA customers information about transition costs. While potential DA customers may be sophisticated, there still should be a minimum level of transparency.*

#### **Calpine Solutions’ Comments:**

The current rule states that, beginning five days before annual “Announcement Date”, utilities and ESSs must post on their website “estimates of prices for electricity services in the subsequent calendar year or subsequent contract period if different than a calendar year.”<sup>1</sup> The rules require the ESS to provide the Commission a URL address where the prices will be posted and state the Commission will post the URL address on its own website.<sup>2</sup> The rules state the prices posted by ESSs are intended to “allow electricity consumers to compare the estimated prices of the electric company and the electricity service supplier”, but the rules also state “[a]nnouncing estimated prices as required by this rule creates no obligation on the part of electric companies and/or electricity service supplier to provide electricity services to any

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<sup>1</sup> OAR 860-038-0275(3).

<sup>2</sup> OAR 860-038-0275(4).

consumer at the estimated prices.”<sup>3</sup>

In practice, this requires the ESS to post forward market prices on its website, but in reality each customer can, and typically does, customize the specific supply it purchases from the market through the ESS. Thus, as previously communicated at workshops, Calpine Solutions questions the value of requiring an ESS to publish a forward market price on a website. However, Calpine Solutions does not find the current requirement to be burdensome and does not object to retaining it.

Relatedly, Calpine Solutions continues to disagree with PGE to the extent PGE has asserted Calpine Solutions has not complied with the current requirement in recent years. PGE appears to take issue with the difficulty of locating the prices on ESS websites. If the Commission expects ESSs to comply with the existing rule in a manner different than compliance has occurred in recent years, further guidance would be appreciated to avoid misunderstandings.

**2. Staff’s Proposal Regarding Caps and Behind the Meter (“BTM”) Load Growth:**

- *The 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.*
- *Petitions to exceed the capacity cap will be examined through a 90-day process similar to what has been outlined for VRET programs in UM 1953.*
- *Regarding BTM load growth, Staff views this issue as tethered to the existence and size of DA caps overall. Staff is amenable to accommodating BTM load growth assuming all risks, including cost-shifting concerns, are*

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<sup>3</sup> OAT 860-038-0275(3)(c)-(d).

*otherwise addressed through transition charges, Resource Adequacy, etc.*

**Calpine Solutions' Comments:**

Calpine Solutions supports Staff's proposal on the second and third points above, but has concerns for further consideration regarding the first point.

Staff clarified at the last workshop that the Straw Proposal is that the Commission would recalculate the upper level of enrollment allowed under the cap each year, which would require annual re-evaluation of factors in each year. For example, the Commission would presumably engage in a proceeding each year to determine the amount of capacity (or annual average MW) of load that could be offered for enrollment in each year, presumably for each separate direct access program, such as 20 aMW offered one year for a utility's long-term direct access ("LTDA") program and possibly a different amount offered the next year, e.g. 30 aMW.

Calpine Solutions certainly supports increasing the transparency regarding the amount of available enrollment capacity remaining under the caps because, as it currently stands, a party must intervene in the Commission proceedings to obtain such information through discovery. Instead, the utilities (or the Commission) should post on a website the existing measure of load that can enroll in each program before the enrollment cap is exceeded, and the Commission should verify that such amounts are accurate with data supplied by the utility before each enrollment window.

However, Calpine Solutions has concerns with the proposal to engage in an annual proceeding to weigh all factors and develop a specific cap level offered each year. Given all of the other commitments of the parties and the Commission, it is likely that such annual proceeding will not be completed each year in time to provide necessary notice to ESSs and prospective customers of whether there will a meaningful direct access offering. The lack of certainty could seriously undermine ESS efforts and customer interest in direct access. To avoid such problems, if the

Commission decides to establish a cap level on annual enrollment (as opposed to the current overall enrollment caps), the Commission should adopt an annual cap level that will be offered unless otherwise noticed through order of the Commission.

## **B. Non-bypassability Issues**

### **Staff's Proposal:**

- *Non-bypassable charges are those charges that may not be avoided by the transition to direct access.*
- *Staff 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.*
- *Staff is open to including a list of conditions in the rule that make costs associated with a policy non-bypassable. For example, above-market costs associated with implementing public policy goals.*
- *In the contested case phase of UM 2024, the current list of non-bypassable charges will be determined, which will include consideration for types of charges associated with HB 2021 that cannot be avoided under HB 2021 Section 14.*
- *Non-bypassable charges should be allocated to a DA customer in the same method as a COS customer of similar size and load profile.*

### **Calpine Solutions' Comments:**

Calpine Solutions supports Staff's proposal with some limited clarifications. In general, parties appear to be in agreement that the Commission should develop a general standard in its rules for determining which charges should be non-bypassable, but given the fact-specific nature of such a determination for any specific charge, the Commission should not attempt to codify in its rules which charges will be non-bypassable. Staff's Straw Proposal takes that flexible approach, and Calpine Solutions supports that aspect of the Straw Proposal.

However, Calpine Solutions reserves the right to further comment on the precise rule

language proposed by Staff. The language should be stated as a standard that can be easily applied to individual charges, yet flexible enough not to unreasonably exempt or include charges from non-bypassability. On that point, the language proposed by Staff in the second point above is likely too prescriptive. Calpine Solutions generally supports the standard proposed by Alliance for Western Energy Consumers’ (“AWEC”) straw proposal in UM 2024, which proposed to make public policy costs non-bypassable and defined such costs as follows: “Public policy costs are those that do not confer a demonstrable electric system benefit on some customers over others (e.g., similar to taxes) and are components of a program required by law or regulation.”<sup>4</sup> Calpine Solutions also agrees with AWEC that the allocation method for such costs should not be mandated in the administrative rule because, similar to the applicability of such costs, the proper rate allocation method could reasonably vary from one type of cost to another depending on the specific facts and circumstances of the cost.

### **C. Provider of Last Resort**

#### **Staff’s Proposal:**

- *ESS participation in an RA program and also charging DA customers for POLR backstop capacity is duplicative. Based on the current NWPP program and anticipated state RA requirements, customer choice for RA/POLR options is not feasible or warranted. IOUs continue to have POLR obligations, and should seek to implement rates that are reflective of the cost of providing such service. A separate capacity charge for POLR obligations is not necessary because RA planning ensures adequate planning capacity.*
- *The assumption for ratemaking purposes is that an ESS demonstrating RA is sufficient to ensure capacity for a direct access customer in an emergency situation.*
- *Utilities may choose to preferentially curtail customers on emergency default service, but only if all other options have been pursued; including RA resources set forth for customer’s load, other ESS or market options,*

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<sup>4</sup> AWEC’s Straw Proposal, Docket No. UM 2024, p. 3 (Aug. 23, 3021).  
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*any capacity sharing agreements, and generation from the utility's resource stack.*

- *Emergency default service rates shall be designed to mitigate or avoid cost-shifting.*

**Calpine Solutions' Comments:**

Calpine Solutions supports Staff's proposal on all points above and urges Staff to include these proposals in the rules. Although PGE has indicated that it would be cost-prohibitive to implement a preferential curtailment procedure for customers on default service, those assertions are unsupported. PGE has not explained why curtailment in this context is so difficult when PGE regularly implements curtailment of certain loads through its demand response programs without so much difficulty. PacifiCorp has provided no information on its capabilities in this regard.

Until it is proven that the preferential curtailment arrangement is logistically or technically infeasible, the Staff proposal should be retained. If Staff is concerned with feasibility, Staff could include the option in the administrative rules for each utility to seek a waiver from the requirement by demonstrating that implementing preferential curtailment is cost prohibitive or technically infeasible through a contested case. If the utility obtained such a waiver, the direct access customers of that utility would not be able to use preferential curtailment, and the utility could propose rates for default service or provider of last resort service that reflect the inability to preferentially curtail customers on emergency default service. However, such rates should reflect the very limited circumstances where a preferential curtailment would occur in any event. In sum, Calpine Solutions continues to support Staff's proposal.

## **D. HB 2021 ESS Reporting and Disclosure Requirements**

### **1. Staff's Proposal Regarding Filing requirements:**

- *All ESSs that are certified under ORS 757.649 and have sold electricity to DA customers in the state in the previous calendar year or have executed a contract to sell electricity to end users in the state within the following three calendar years are required to file a report.*
- *Reports should be filed on or before June 1st every year to correspond with the DEQ emissions reporting deadline and the RPS compliance reporting deadline.*
- *ESSs will begin reporting in 2027 (3 years prior to the first compliance target date)*
- *ESSs will file the annual DEQ emissions report with the Commission on or before June 1 between 2023 and 2027.*

### **Calpine Solutions' Comments:**

Calpine Solutions supports Staff's proposal on all points above.

### **2. Staff's Proposal Regarding Post-2027 filing contents:**

- *Require use of a reporting template if one is adopted by the Commission.*
- *Attach a copy of the DEQ emissions report.*
- *Include the following analysis:*
  - *Checklist that shows how the ESS complied with the HB 2021 §5(3)-(4) and the Commission's administrative rule requirements related to the ESS HB 2021 looking report.*
  - *Summary of the specific resources, MWh generation from those resources, and emissions per MWh (MTCO<sub>2e</sub>/MWh) associated with serving Oregon Direct Access customers, and emissions from the previous calendar year that were reported to DEQ (and attached to the forward-looking report).*
  - *Load Forecast for the next three years – aggregate across Oregon direct access customers. Either require load resource balance consistent with a reliability metric adopted by the Commission or include a resource adequacy report identified in Docket No. UM 2143 if there is one adopted with 3 year or more outlook. (See 2021 §5(3)(c)(A) "reliable"). This requirement relies on decisions made*



*under UM 2143 therefore a determination on this rule will not be made under UM 2024/AR 651.*

- *Action plan that specifies the resources, including specified and unspecified market purchases, that the customer plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology.*
  - *An analysis of the \$/MWh (levelized if under different pricing structure) that the customer will be charged for service related to compliance for each of the next 3 years. (See 2021 §5(3)(c)(A) “affordable”)*
  - *A list of actions that can be taken to accelerate the rapid reduction of greenhouse gases at reasonable costs to Direct Access customers including but not limited to (See 2021 §5(3)(c)(B)):*
    - *Development of non-emitting dispatchable resources*
    - *Demand response offerings*
    - *Energy efficiency offerings*
    - *Onsite renewable generation*
  - *Reporting and disclosure will be designed such that competitively sensitive or trade secret information will be kept confidential to the extent permitted by Oregon law (e.g., load, generation, and cost data).*
- *Outstanding Questions for Stakeholders*
- *How should the Commission verify that the ESS is likely to take those actions?*
  - *Should ESSs that serve customers in Pacific Power’s service territory and Portland General Electric’s service territory file separately for each utility?*
  - *How should the Commission monitor whether the cost estimates were off, if at all?*

**Calpine Solutions’ Comments:**

In general, Calpine Solutions supports Staff’s proposal on the above points with one exception. Staff’s proposal that ESSs offer demand response and energy efficiency programs in order to achieve “reasonable” costs of compliance with the decarbonization thresholds of HB 2021 deserves further consideration. In general, it is likely to be more efficient for direct access

customers to participate in the energy efficiency and demand response programs already offered by the utilities and the Energy Trust of Oregon as opposed to mandating that each ESS develop such offerings from whole cloth itself. As Calpine Solutions has previously commented in UM 2024, utilities in other states have designed demand response programs that allow for the participation of direct access customers. Calpine Solutions would be interested in working with stakeholders to make that a possibility in Oregon.

Additionally, to the extent Staff's Straw Proposal suggests that an ESS may be penalized because the cost of compliance with HB 2021 is not a "reasonable" cost or deviates from expectations from an action plan, Calpine Solutions objects to such a proposal. The statute merely requires that the Commission consider "[a]nticipated actions to facilitate rapid reductions of greenhouse gas emissions *at reasonable costs* to retail electricity consumers served by the electricity service supplier[,]"<sup>5</sup> and does not include any requirement that the actual costs of compliance meet a reasonableness test. The costs of compliance with HB 2021 will be largely dictated by available carbon-free and low-carbon energy products available in the market, and penalizing an ESS for market forces beyond its control is unjustified.

In response to Staff's outstanding questions above, Calpine Solutions recommends that compliance with the commitments in the report could be evaluated through a backward-looking evaluation in the following period's report. However, the rules should recognize that circumstances can materially change after the plans for compliance are submitted, and the rules should not expect actions taken to achieve compliance thereafter will always mirror the plans or penalize an ESS that takes reasonable alternative actions to meet its compliance. Additionally, ESSs that serve customers in both PacifiCorp and PGE's service territory should be permitted to

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<sup>5</sup> 2021 Or Laws ch 508, § 5(3)(c)(B).

file a single consolidated report for all of its customers. The statute measures compliance by total ESS load, and therefore requiring separate filings for each utility is not necessary.

**3. Staff's Proposal Regarding Report Review Process:**

- *Commission will approve compliance with HB 2021 §3 targets in a manner consistent with HB 2021 §5 and HB 2021 §8 for the previous year.*
- *The Commission will also, via order, accept the §5(3) report if it includes the information requested in HB 2021 §5(3) and the Commission's administrative rule requirements related to the forward-looking report.*
  - *If the Commission determines that it will not accept the report, it will issue an order detailing the shortcomings and any requested analysis or considerations. The ESS must refile a report that remedies the deficiencies.*
- *Commission staff and interested persons may file written comments within 45 calendar days of the filing.*
- *ESS may file a written response to any comments within 30 calendar days thereafter.*
- *After considering written comments, the Commission may decide to commence an investigation, begin a proceeding, or take other action as necessary to make a determination regarding HB 2021 Section §5's requirement for continual and reasonable progress toward compliance with the clean energy targets set forth in HB 2021 §3.*
- *ESS must post a non-confidential version of the Section §5(3) report on website within 30 days of the Commission decision to accept the report (or not).*
- *ESS must provide information about its compliance report to its customers by bill insert or other Commission-approved method.*
- *Outstanding questions for stakeholders*
  - *Should the Commission determine compliance with the targets in HB 2021 §3 as required by HB 2021 §5(4) and accept the forward-looking report in HB 2021 §5(3) in the process or separate reports and orders?*

**Calpine Solutions' Comments:**

In general, Calpine Solutions supports Staff's proposal, but urges Staff to ensure its proposal includes adequate protection for commercially sensitive information to prevent harm that would result from disclosure of market positions and strategies for compliance with HB 2021 by individual ESSs. The suggestion that there can be public comment on an ESS's compliance plan for a forward looking plan is difficult to square with the fact that such information is almost certainly going to need to be shielded from public disclosure. Even a backward-looking report could, in some circumstances, reveal important information that should be shielded from public disclosure. The HB 2021 §5(3) report must include an estimate of annual greenhouse gas emissions associated with electricity sold by the ESS for the current year and the following three years. To the extent that the contents of the report would allow parties to back out information about the ESS's expected load and market positions, it should be subject to confidential protection.

It is important to bear in mind that ESSs are different from Oregon's investor-owned utilities in that ESSs must compete with each other for all of their load, and ESSs therefore have a very strong interest in shielding their market position and compliance strategies from such competitors. In contrast, while the utilities have commercially sensitive information, the utilities also have a much larger captive customer base that is not potentially at risk of switching to another supplier (i.e., all load not eligible for available direct access programs) and have far more market power in the wholesale market than Oregon's ESSs. Thus, it is not necessarily reasonable to expect the level of transparency in the utility's public resource planning filings for ESSs.

In response to Staff's outstanding question above, Calpine Solutions recommends consolidating the reports to the extent practical as opposed to requiring multiple reports with overlapping data.

- 4. Staff's Proposal Regarding Disclosure Language:** *ESS must post a summary of the aggregated energy supply mix and associated emissions for the DA load served in Oregon in the previous year. When historic data is unavailable, the ESS must use a reasonable estimate of future resource mix. The website must be updated annually and either included on or via a link on its indicative pricing website as required under OAR 860-038-0275.*

**Calpine Solutions' Comments:**

In general, Calpine Solutions supports Staff's proposal. At the workshop, PGE recommended that the ESSs' resource mix be produced in the same format as the utilities produce it, and Staff suggested that the utilities could publish each ESS's supply content with the utility's own reports. However, Calpine Solutions has concerns with delegating to the utilities the publication of ESS supply content, given that the utilities are ultimately in competition with the ESSs, and Calpine Solutions would instead prefer for the Commission to develop a specific format and publication method (e.g., specific URL) that ESSs must follow if the Commission agrees with PGE that the format should mirror that used by the utilities.

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*/s/ Gregory M. Adams*  
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Gregory M. Adams (OSB No.101779)  
RICHARDSON ADAMS, PLLC  
515 N. 27<sup>th</sup> Street  
Boise, Idaho 83702  
Telephone: (208) 938-2236  
Fax: (208) 938-7904  
greg@richardsonadams.com

Of Attorneys for Calpine Energy  
Solutions, LLC