Oregon Citizens' Utility Board
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November 18, 2022

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 Draft Preferential Curtailment Rules***

Dear Mr. Bolton:

The Oregon Citizens' Utility Board (CUB) appreciates the opportunity to provide comments on the Public Utility Commission of Oregon Staff's (Staff) draft preferential curtailment rules, which were discussed at the November 2, 2022 workshop. CUB thanks Staff for its leadership and vision in this proceeding and appreciates the hard work of all stakeholders. These comments will address preliminary considerations regarding any potential preferential curtailment policy before addressing the specific provisions included in Staff's draft rule language.

Preferential Curtailment Generally

The Public Utility Commission of Oregon (Commission) has a legally binding obligation to ensure that the provision of direct access (DA) to some retail electricity customers not cause the unwarranted shifting of costs to other retail electricity customers.[1] DA customers are given a choice—they have the ability to avail themselves of the benefit of the competitive electricity marketplace. The captive cost of service (COS) customers CUB represents have no such choice. Therefore, it is imperative that captive COS customers not be assessed costs that would otherwise not exist but for the existence of the DA program. DA customers assume a risk when they choose to depart an investor-owned utility's (IOU) system for the marketplace. That risk includes whether competitive wholesale prices will be lower than IOU rates and a risk that their electricity service supplier (ESS) may default. In the event of an ESS default, DA customers must bear the costs associated with the risk they take on.

Put another way, any preferential curtailment policy, if allowed, must not cause any cost shifting from DA customers to COS customers. Such a policy would run counter to the Commission's legal obligation to eliminate the "unwarranted shifting of costs."[2] If a preferential curtailment

[1] ORS 757.607(1).
[2] *Id.*

policy is enacted, DA customers must be responsible for all direct and indirect costs associated with its administration. If the goal of preferential curtailment is to protect COS customers from unwarranted cost shifting, the policy is at best an uncertain method of doing so that brings many risks. At worst it will result in more cost shifting than would otherwise occur. The devil remains in the details.

CUB remains concerned about the viability of a preferential curtailment policy, including whether an IOU would actually curtail large customer load. Large industrial customers pressuring IOUs to cater to their desires is common, and it is likely that the decision to preferentially curtail a customer would be subject to significant political pressure from the customer to the IOU. Especially troubling is Staff's reliance on a comparison of preferential curtailment in provider of last resort (POLR) scenarios to the treatment of natural gas transport customers subject to interruptible service.[3] As history has shown us, interruptible customers on the gas side are often not curtailed in an emergency event even though they should have been.[4] It is within reason to expect similar treatment on the electric side, where failure to curtail would come at a great cost to the IOU and its COS customers.

Further, as noted in PacifiCorp's October 3 comments, it may not be practicable or good policy to curtail certain DA customers—such as hospitals, education facilities, and housing.[5] CUB agrees with many of the issues raised in PacifiCorp's comments, several of which warrant further discussion in a workshop setting or represent outstanding factual issues that require resolution in a contested case setting. Given that not all issues relevant to a preferential curtailment policy—including whether there should be one at all—can be resolved in a high-level rulemaking proceeding, CUB questions the utility of creating a partial set of rules regarding preferential curtailment in this setting. To CUB, a more fulsome conversation around rules for preferential curtailment can occur after the contested phase when more information is known about the implications of implementing a preferential curtailment program, including whether it is even feasible.

Nevertheless, in the spirit of collaboration and to align with Commission guidance at its October 4, 2022 public meeting, CUB offers these comments to help guide the discussion of this important topic.

OAR 860-038-0290(2)

As drafted, this rule provision requires IOUs to "attempt to serve the returning consumer with market purchases or the electric company's excess generation" if an ESS is no longer providing service. CUB believes PacifiCorp's comments highlight real concerns with this language that warrant further exploration. First, it is unclear what Staff envisions when it references "excess generation." As CUB explained at the October 4 public meeting, 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

[3] Order No. 22 364 at Appx. A, p. 6 (Oct. 7, 2022).
[4] *See, e.g.,* UE 388 – Staff/700/Soldavini/4-5 (". . . interruptible customers [failed] to voluntarily curtail themselves (as they were called on to do by the Company").
[5] AR 651 – PacifiCorp's Comments on Staff Report at 4 (Oct. 3, 2022).

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.[6] Regardless of the definition agreed upon in this setting, it is imperative that, if enacted, this provision must not result in the shifting of costs to COS customers.

Second, if it is unclear whether an IOU would have sufficient excess generation or market purchases with which to serve the returning DA customer, this rule language must afford the IOU sufficient flexibility and authority to choose whether it is practicable to serve the DA customer. If there is any doubt regarding whether there is sufficient generation or market purchases, the IOU must retain the ability to curtail the customer at its own discretion. As drafted, it appears the rule language ("must *attempt*") does afford the IOU this flexibility to make decisions based on an interest to protect its system and COS customers. This flexibility also appears to be present in Staff's draft rule OAR 860-038-0290(3).

Again, administering this portion of the rule must not result in any cost shifting to nonparticipating COS customers.

OAR 860-038-0290(4)

As drafted, this rule allows the IOU to collect a reasonable charge from a DA consumer to "recover necessary costs for system upgrades that operationalize preferential curtailment of that consumer, using a Commission approved methodology."

CUB supports this section. Any costs driven by a DA customers' return to IOU service must be borne by that DA customer to avoid cost shifting. As Staff astutely notes, "if the DA customers is not responsible for those costs it would inappropriately shift costs onto other retail customers."[7] Further, the use of a Commission-approved methodology should help ensure adequate stakeholder feedback and will enable the Commission to consider its statutory obligations when approving a methodology.

OAR 860-038-0290(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. This section also requires IOUs to plan for and acquire capacity to account for a DA customer's potential return to the electric system.

CUB supports IOUs retaining the ability to determine whether preferential curtailment is a feasible option, although this term may require additional workshops to coalesce around an agreeable definition to that term. However, CUB is concerned that requiring an IOU to plan for any potential future return may cause the IOU to acquire excess capacity that may be charged to COS customers. Such an outcome would run counter to the Commission legal obligation to

[6] AR 651 – PacifiCorp's Comments on Staff Report at 3-4 (Oct. 3, 2022).
[7] Order No. 22-364 at Appx. A, p. 7 (Oct. 7, 2022).

eliminate cost shifting. Since ESSs are now required to carry adequate capacity and are largely participating in the Western Resource Adequacy Program, the IOU should not have to plan for a potential return that is highly unlikely. 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. CUB's reading of Staff's draft rules indicates that the intent is to insulate COS customers from capacity costs driven by DA customers. This provision may also benefit from further investigation in a workshop setting to ensure it would be implemented in practice as intended. PacifiCorp also cites the need for further refinement on this point, which CUB supports.[8]

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. Some of these questions—such as the costs of required system upgrades, excess generation, and market purchases—likely need to be addressed in a fact-based setting during the contested phase of this proceeding. In the meantime, CUB looks forward to continuing to engage with Staff and stakeholders to help design a program that protects COS customers and aligns with Commission rules and guidance regarding the long-term DA program.

Sincerely,

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