BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

AR 651

In the Matter of Rulemaking Regarding Direct Access Including 2021 HB 2021 Requirements	CALPINE ENERGY SOLUTIONS, LLC'S COMMENTS REGARDING PROVIDER OF LAST RESORT PROPOSALS

I. INTRODUCTION

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby submits its comments to the Public Utility Commission of Oregon ("Commission") regarding provider of last resort ("POLR") proposals. Specifically, these comments address issues surrounding Staff's most recent straw proposal for POLR issues, as included in the Commission's proposed administrative rules (Proposed Rule 860-038-0290), PacifiCorp's POLR proposal circulated November 2, 2022 ("PacifiCorp's Nov. 2nd Proposal"), and discussions at the workshop held on November 2, 2022. Calpine Solutions is also engaged in Docket No. UM 2143 regarding Staff's straw proposal for resource adequacy ("RA") rules. The RA and POLR issues are closely related, and Calpine Solutions is concerned that duplicative charges or requirements could be developed for electricity service suppliers ("ESS") and direct access customers where the RA and POLR issues are being addressed in different proceedings. In particular, the Proposed Rule 860-038-0290(5)(a)-(b) appears to impose a duplicative capacity-based POLR charge on any direct access customer still taking service from an ESS even where the ESS is in full compliance with applicable RA requirements or alternatively pays a capacity-based RA backstop charge to the utility. That arrangement for duplicative charges to direct access customers is not reasonable.

As explained further below, Calpine Solutions generally supports the framework presented by PacifiCorp's proposal circulated on November 2, 2022, which would assess a POLR energy and capacity charges to long-term direct access ("LTDA") or new load direct access ("NLDA") customers that cease purchasing energy from an ESS sooner than the required notice to return to cost-of-service rates. However, Calpine Solutions opposes development of a POLR charge that would apply to customers who are still purchasing energy from an ESS. Resource adequacy for such customers should be met through either the ESS's compliance with an RA requirement or through an RA backstop charge paid to the utility.

II. COMMENTS

As explained below, Calpine Solutions generally supports the framework proposed by PacifiCorp for moving forward with development of additional POLR requirements for Oregon's direct access customers and offers certain changes and clarifications to the specific proposal made by PacifiCorp. However, these comments will first address the existing rules governing return to utility service because there appears to be some misunderstanding on the current rules in place, which should inform the extent of changes necessary.

A. Oregon's Existing Rules and Rates for Return to Utility Service

In discussion of the POLR issue, there appears to be a significant misunderstanding by some parties regarding the Commission's existing rules. Both utilities continue to suggest, or directly state, that an LTDA or NLDA customer returning early without proper notice would use the utility's cost-of-service supply and pay the utility's rates for that cost-of-service supply. For example, PacifiCorp's Nov. 2nd Proposal asserted that "a utility can only keep a returning customer on emergency service for five days, at which point the customer can transition to Cost of Service rates."[1] PacifiCorp also asserted that an early-return customer would cause the utility to "purchase high-price market power to serve returning customers," the costs of which, absent new and additional protections, "will be passed through to *all customers* through the utility's net power cost proceedings."[2] These assertions are inconsistent with the existing regulatory framework.

As a general matter, the Commission's administrative rules already go a long way towards protecting cost-of-service customers from an LTDA or NLDA customer that ceases purchasing from an ESS for whatever reason. The rules provide an "emergency default" service option when an ESS ceases serving a customer, and require that the utility move the customer from emergency default service to "standard offer service" within five days.[3] However, the rules do *not* require the utility to move the customer to cost-of-service rates before expiration of the applicable notice period in the LTDA or NLDA program. The administrative rules state that the nonresidential standard offer rate "shall be . . . priced based on supply purchases made on a competitive basis from the wholesale market plus the transition credit or transition charge, if any, and all other unbundled costs of providing standard offer service."[4] Further, a "standard offer rate *must* reflect the full costs of providing standard offer service."[5] The rules also provide that "an electric company *may* offer a cost-of-service rate to large nonresidential consumers in lieu of a one-year standard offer rate option."[6] But there is no obligation that the utility offer a cost-of-service rate in lieu of the standard market-based pricing.

[1] PacifiCorp's Nov. 2nd Proposal, p. 2.
[2] PacifiCorp's Nov. 2nd Proposal, p. 2 (emphasis in original).
[3] OAR 860-038-0280; OAR 860-038-0720.
[4] OAR 860-038-0250(2)(a).
[5] OAR 860-038-0250(2)(a) (emphasis added).
[6] OAR 860-038-0250(2)(g) (emphasis added).

Thus, there is no basis in the utilities' arguments that customers returning early from the LTDA or NLDA programs can access cost-of-service rates before expiration of the applicable notice period for return to service, unless the utilities are voluntarily allowing or encouraging that to happen. And the allegation that such customers would shift costs to other customers by doing so, if it would occur, is due solely to the unilateral decisions of the utilities to offer such customers cost-of-service rates. In sum, the utilities are already fully empowered by the existing rules to charge the LTDA or NLDA customer returning early the market prices incurred to serve such customers. The only circumstance where the utility may need to use its own cost-of-service portfolio to serve an early-return customer is where there is literally no energy available whatsoever in any accessible wholesale market or other wholesale transaction. However, nothing in the existing rules precludes the utilities from including in their standard offer tariffs a capacity-based charge to ensure capacity to serve the customers is available to the extent such a charge is justifiable in addition to an energy-based charge.

In the case of both utilities, existing tariffs provide that the early-returning NLDA or LTDA customer may not return to cost-of-service rates until a multi-year notice period expires, and the customer must take so-called "standard offer" service in the interim. Portland General Electric Company's ("PGE's") LTDA tariffs state two or three years notice must be provided (depending on vintage of enrollment) to terminate service in PGE's five-year program, and then be treated like any other cost-of-service customer.[7] While waiting for that notice period to expire, the customer can be served at the "Company Supplied Energy" in PGE's LTDA program tariff, which is described as an Intercontinental Exchange Mid-C index plus 2 mills.[8] PGE's

[7] *E.g.*, PGE's Schedule 485, p. 5.

[8] *E.g.*, PGE's Schedule 485, p. 2.

NLDA tariff applies a three-year notice requirement and the same "Company Supplied Energy" option at the market index plus 2 mills.[9] Thus, PGE's standard offer rate is already a market price plus an added price. Similarly, PacifiCorp's LTDA and NLDA tariffs unambiguously bar the customer from moving to cost-of-service rates until the applicable notice period is over, which in PacifiCorp's case is four years.[10] PacifiCorp's Schedule 220, Standard Offer Service, currently provides an energy price based on a blend of the Platts indices for four market hubs and "thermal" cost weighting.

To the extent that PacifiCorp or PGE's standard offer tariffs include some element cost-of-service rates (as PacifiCorp's Schedule 220 appears to do with a "thermal" cost element), the utilities are already fully empowered to remove such cost-of-service elements from the standard offer under the existing administrative rules. If the utilities are truly concerned that early-return customers should not be allowed to receive cost-of-service prices, their standard offer tariffs should be enforced as written or revised to the extent already allowed by the rules. Similarly, if the energy-only pricing based on an index is believed to be insufficient to ensure capacity will be available in all hours to serve such customers, nothing in the rules precludes adoption of a capacity-based element to the POLR charge for capacity contracts the utilities could purchase upon early return of such customers.

Additionally, the suggestion that no LTDA or NLDA customers ever pay anything for the utility's capacity resources is incorrect. An LTDA customer still within the period of payment of

[9] PGE's Schedule 689, p. 3-4.

[10] PacifiCorp's Schedule 293, p. 3 (NLDA); PacifiCorp's Schedule 296, p. 1 (LTDA); *see also* PacifiCorp's Rule 21, p. 9 (stating: "If the Company receives a request for Cost-Based Service from a Consumer ineligible for such service under this Rule, then the Company will notify the Consumer of its ineligibility and request a new authorization from the Consumer for Standard Offer Service").

its ongoing valuation transition charges is already paying the utility for capacity through the continued applicability of charges for fixed generation costs. That would include customers within five years of their opt out election in the case of PGE and within 10 years of their opt out election in the case of PacifiCorp, which employs a 10-year ongoing valuation charge. Similarly, NLDA customers must pay a charge equal to 20 percent of the utility's fixed generation costs for five years.[11] Because such LTDA and NLDA customers are effectively paying for some increment of capacity, it would be unreasonable to charge them again for such capacity, especially before they even return to being served by the utility's capacity. The utilities have presented no evidence or argument that the existing charges paid by customers in these five and 10-year transition periods are insufficient to cover the cost of the POLR products needed to potentially serve such customers who would also pay market-based prices for electricity upon early return.

B. Comments on Revision to POLR Rules

Against the above backdrop, the utilities have advocated for enhanced POLR charges, and the Commission published a proposed administrative rule containing Staff's proposed revisions that would implement preferential curtailment of direct access customers as one option to address the POLR issue. With respect to preferential curtailment, the Commission has expressed interest in allowing sophisticated direct access customers to elect to be subject to curtailment during emergencies to avoid paying certain POLR charges. The Alliance for Western Energy Consumers has expressed that contractual curtailment should be an option such that the customer could be assessed liquidated damages in the event that it did not comply with a curtailment order from the utility. Calpine Solutions does not object to the Commission

[11] OAR 860-038-0740(3)(a).

providing the proposed curtailment options, but also recommends that it is important to develop reasonable alternative charges that would apply in lieu of such curtailment election. Both utilities have expressed a position that not all customers would even be eligible to commit to curtailment. PacifiCorp asserts no customer under 25 MW could be curtailed, and PGE asserts certain categories of essential service providers (e.g., hospitals) should be ineligible for curtailment. Additionally, some customers may prefer not to be subjected to preferential curtailment. Thus, while providing a preferential curtailment option may be attractive to certain customers, such as customers who have back-up or other onsite generation to serve critical needs, Calpine Solutions urges the Commission to develop reasonable terms and/or charges that would allow customers to opt out of preferential curtailment, without being subject to duplicative capacity charges.

As explained above, the existing rules already allow for development of significant energy and capacity charges for POLR service through the existing standard offer framework, to the extent such costs are justifiable, and the Commission is also concurrently developing an RA requirement, with an RA backstop charge option, applicable to ESSs and direct access customers. Given that related regulatory structure, the following key principles should apply to any rule revisions regarding the POLR issue.

First, customers of an ESS complying with RA requirements of the Western Resource Adequacy Program ("WRAP") or an OPUC-specific RA requirement for non-participants in the WRAP should not also have to pay an advance POLR charge while the customer is being supplied by such RA-compliant ESS. The utilities have not disclosed the likely POLR product they would procure or the likely costs, but imposing a large POLR charge on customers whose ESS is already meeting the RA requirements deemed to be prudent procurement of capacity is discriminatory and unfair. No electric utility service provider, including the investor-owned utilities, is 100% reliable, and making direct access customers alone pay for extra POLR insurance, while also meeting prudent RA requirements, is discriminatory. That is not to say that an NLDA or LTDA customer leaving service of an ESS in an emergency or on a longer-term basis without providing adequate notice should pay nothing for the energy supplied to it. But such customers already must pay the market price for the power. If the market price spikes, such customer is still bound to pay the market prices to the utility until the applicable notice period expires. If the utility is serving the customer with cost-of-service plants, that is solely because the utility chose to do so. Customers that remain in the LTDA and NLDA program served by an RA-compliant ESS should not be penalized through an advance capacity-based POLR charge when the utility is empowered to charge such customers the full energy and capacity costs to serve such customers upon such early return.

Second, customers paying the RA backstop charge in lieu of purchasing an RA product through their ESS should certainly not also have to pay the POLR charge. Otherwise, the customer would pay the utility for capacity for emergency return twice: once with the RA backstop charge and a second time through the advance POLR charge. PGE appears to be the only utility strongly advocating for this outcome, but it has not identified or explained the cost of any of the potential capacity products it would procure, much less explained how this arrangement is not a duplicative double charge to direct access customers.

Third, if any POLR charge will be assessed to a customer still being served by an ESS (which Calpine Solutions opposes), the Commission should adopt strict requirements for such a charge in its rules. Those rules should require the utility to transparently identify the resources or option contracts it is procuring in support of the charge it assesses. The utility should not be allowed to just collect the charge and then not take any action to procure any product that is needed to provide the POLR service. The Commission should also reassess the need for the POLR charge annually. If PUC determines no resources are needed to provide POLR service in the upcoming year (e.g., if the regional energy market has sufficient depth that advance procurement of capacity products is unnecessary), then there should be no advance POLR charge assessed.

C. Response to PacifiCorp's POLR Proposal

Calpine Solutions believes that PacifiCorp's POLR proposal, circulated on November 2, 2022, provides a useful framework to develop revisions to existing POLR tariffs in a reasonable manner. The comments below will highlight the key elements of PacifiCorp's proposal as we understand it, and then propose some modifications and clarifications to the framework PacifiCorp proposed.

Under PacifiCorp's proposal, curtailable and non-curtailable customers would be treated distinctly. However, because PacifiCorp's proposed 25-MW threshold for curtailment means that most customers would necessarily be non-curtailable customers, Calpine Solutions focuses on the proposal for such non-curtailable customers.

POLR Charge: Upon return to the utility, the "non-curtailable" customer would pay a capacity-based and energy-based standard offer rate for four years before being allowed to move to cost-of-service rates.[12]

Calpine Solutions agrees that this aspect of the proposal is reasonable subject to certain clarifications. First, LTDA and NLDA customers within the five or 10-year period who return to utility service early and pay the proposed POLR rates should not also be assessed their otherwise

[12] PacifiCorp's Nov. 2nd Proposal, p. 3.

applicable transition charges during this four-year period. Second, if these new charges are adopted, they should replace all or part of the special charges assessed to early return customers under the current tariff, such as Schedule 201's "Returning to Service Charge" and Schedule 293's forward looking rate adder applied to customers returning to cost of service.[13] In general, however, Calpine Solutions strongly supports limiting the new POLR charge to a charge that applies upon the customer's return to standard offer service by the utility, *not* while the customer is still being served by its ESS, especially where the ESS is in compliance with the applicable RA requirement adopted in UM 2143 or paying the utility an RA backstop charge. Notably, nothing in the Commission's existing administrative rules appears to preclude PacifiCorp or PGE from implementing POLR capacity and energy charges similar to those proposed in PacifiCorp's November 2, 2022 proposal. Indeed, as noted above, the Commission's rules already state that a "standard off rate *must* reflect the full costs of providing standard offer service."[14]

Program Caps: PacifiCorp proposes that POLR pricing proposal is contingent upon use of program caps to mitigate the need for an advance POLR charge paid while a direct access customer is still being served by an ESS, and conversely suggests that if the caps were to be increased beyond their current level, the Commission should implement such an advance POLR charge.[15]

In the abstract, without knowing the level to which the caps might be raised, it is difficult to specifically comment on this aspect of PacifiCorp's proposal. However, Calpine Solutions agrees that program caps are a method that could be employed to limit the need for capacity payments to the utility of any type, including an advance POLR charge. Where enrollment in the

[13] *See* OAR 860-038-0720(3) (requiring such charge to be included in NLDA tariffs)

[14] OAR 860-038-0250(2)(a) (emphasis added).

[15] PacifiCorp's Nov. 2nd Proposal, p. 4.

direct access programs is not substantial, there would appear to be little potential impact with an early return to utility service. Additionally, at this time, enrollment is nowhere near the cap levels in PacifiCorp's NLDA or LTDA programs, so simply authorizing the caps to be raised is not any indication that enhanced risk would be realized. Thus, a better trigger for implementation of such an advance POLR charge, if one could ever be justified, may be the actual level of enrollment in the programs and not simply the level of the program cap. At this time, the Commission could commit to revisit the issue of developing an appropriate advance POLR charge if the enrollment caps are ever raised *and* enrollment rises above the current level of the caps.

Another alternative is that the Commission could create vintages of customers with those in the vintage of enrollment up to the current cap levels, e.g., 175 aMW of LTDA load for PacifiCorp and 300 aMW of LTDA load for PGE, would be subject to the POLR charges itemized above upon early return to utility service but no advance POLR charge. Customers enrolling in the next vintage, if any, would be subject to an advance POLR charge to be filed by the utility for Commission adjudication and decision if the utility still believes such advanced POLR charge is warranted at the time enrollment reaches the first enrollment vintage's cap level. There is precedent in Oregon for applying different terms and conditions to different vintages of LTDA enrollment. For example, PGE's LTDA customers enrolled before 2015, must provide only two years notice to return to cost-of-service, whereas customers enrolled after that time must provide three years notice.[16] Thus, the use of vintages may be a useful mechanism to

[16] *E.g.*, PGE's Schedule 485, p. 5; Docket No. UE , 262, Order No. 13-459, App. B, p. 2 ¶ 3a (stipulation amending notice period).

avoid, or at least limit, the need to procure excess capacity or assess duplicative capacity charges to any customers.

Other Mitigating Measures: PacifiCorp discusses certain other potential mitigation measures being considered in California and recommends adoption of two in Oregon. First, PacifiCorp proposes adoption of a financial reporting requirement for ESSs to ensure the utility receives advance notice of impending failure.[17] Second, PacifiCorp proposes defining POLR service as "temporary, market-cost service that utilities provide to the returning customers for as long as necessary to plan for the return of those customer's to the utility's service."[18] PacifiCorp appears to assert that it does not believe a financial security requirement (e.g., bond) is necessary if its other recommendations are adopted.[19]

With respect to the financial reporting requirement, Calpine Solutions does not object to including a reasonable reporting requirement to alert utilities to adverse financial circumstances of an ESS, subject to review of the details for reasonableness. Notably, however, PacifiCorp and PGE already have extensive credit requirements, including requirements to inform the utility of material adverse changes, in their Rule 21 and Rule K, respectively.[20] It is not clear what further information PacifiCorp proposes here.

With respect to PacifiCorp's proposed definition of POLR service, Calpine Solutions agrees that PacifiCorp's proposed definition is appropriate.

[17] PacifiCorp's Nov. 2nd Proposal, p. 4.
[18] PacifiCorp's Nov. 2nd Proposal, p. 4.
[19] PacifiCorp's Nov. 2nd Proposal, p. 4.
[20] PacifiCorp's Rule 21, pp. 16-22; PGE's Rule K, pp. 2-9.

DATED: November 18, 2022.

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

Of Attorneys for Calpine Energy
Solutions, LLC