

November 18, 2022

**VIA ELECTRONIC FILING**

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**RE: AR 651— PacifiCorp’s Comments on Staff’s AR 651 Draft Rule Revisions.**

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) submits these comments in response to Staff’s Division 38 Draft Rules after the November 2, 2022 workshop.<sup>1</sup> PacifiCorp has long elevated the need to address Provider of Last Resort<sup>2</sup> solutions and appreciates the opportunity for discussion of the Commission’s proposed “preferential curtailment” policy.

While PacifiCorp continues to believe that caps provide the best protection from unwarranted cost shifting, with these comments PacifiCorp hopes to engage constructively on the Public Utility Commission of Oregon’s (Commission) preferred policy of preferential curtailment. Elements of any direct access policy are interdependent, however, and no single tool, standing alone, can solve for all issues caused by the impacts of customer departure and the risk of unexpected customer return. This is particularly true if caps are lifted or set at levels that raise cost or reliability issues. In such a case, it becomes important to fill any regulatory gaps preferential curtailment leaves behind.

Keeping this interactivity in mind, as well as the Commission’s request for constructive engagement on “preferential curtailment,” PacifiCorp recommends the Commission develop rules intended to maximize the value of a preferential curtailment policy while also implementing a constellation of supportive policies needed to mitigate remaining Provider of Last Resort risks that preferential curtailment does not address.

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<sup>1</sup> These comments are intended as follow up to the stakeholder discussions on November 2, 2022, and the Commission’s October 4, 2022 Public Meeting. References to draft rules refer to the draft rules included in the August 28, 2022 Staff Report, and attached to the Commission’s October 7, 2022 Order (Order No. 22-364).

<sup>2</sup> PacifiCorp’s comments presume that utilities will continue to serve the role of Provider of Last Resort in Oregon, with the obligation to serve customers—including returning direct access customers—within their service territories.

**A. Key Provider of Last Resort Issues: Reliability, Cost-Shifting, Compliance Obligations, Regulatory Allocation of Edge-Case Risk.**

In informal comments shared with stakeholders before the last workshop, PacifiCorp attempted to identify each of the key risks raised by Provider of Last Resort obligations and to analyze whether preferential curtailment mitigated that risk. PacifiCorp identified the following key Provider of Last Resort risks:

Reliability: If direct access customers return to their incumbent utility without adequate notice,<sup>3</sup> resources are constrained at the time of that return, and the direct access customers *must be served* by the utility, this may impose additional load obligations during a time of scarcity that can cause or contribute to a system emergency or reliability event. *Preferential curtailment can mitigate this risk in some circumstances, but not in others.*

Cost-shifting: If direct access customers return to their incumbent utility without adequate notice, resources are constrained at the time of that return, and the direct access customers *must be served* by the utility, the utility may be required to purchase high-priced market power to serve returning customers, the costs of which, absent new and additional protections, may be passed through to *all customers* under the Commission's current regulatory structure. *Preferential curtailment does little to mitigate this risk.*

Utility compliance issues: Utilities are required to meet various compliance requirements now and are expected to have increasingly onerous compliance obligations in the future. These include HB 2021 clean energy requirements, resource adequacy requirements, NERC/WECC obligations, contractual commitments, and others. Compliance with each of these requirements is necessary and appropriate for meeting the state's energy goals but constrains a utility's range of choices for addressing the sudden imposition of new load. *As the Commission considers requests to relax direct access requirements, it should keep these compliance issues in mind.*

Regulatory allocation of risk to address the edge case/stochastic risk: Requirements that an ESS be resource adequate can help protect existing customers from planned or known risks of direct access. But effectively, they are simply thoughtful planning requirements not strictly relevant to this docket.<sup>4</sup> The only regulatory mechanism protecting customers from stochastic or unknown risk, however, is caps. If caps are lifted or removed, the resulting gap must be remedied. The potential for a low-probability, high-risk Provider of Last Resort scenario is well known. The regulatory response cannot be to assume that such an event will never occur and to leave existing customers as default carriers of that risk.

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<sup>3</sup> PacifiCorp's reference to "early" or "unexpected" return is intended to refer to a return to the incumbent utility without providing the notice required by the utility's direct access program rules. That notice period is intended to reflect the time needed for the utility to plan for and acquire resources needed to serve the returning customer's load. PacifiCorp's Schedule 293 currently requires four years' notice.

<sup>4</sup> Any load-serving entity intending to reliably serve its customers should seek to be resource adequate.

*Commission rules must address risk in the edge case.*

In short, preferential curtailment may help solve some, but not all, of these issues. During the workshop, stakeholders appeared to acknowledge a number of these issues and some possible solutions were discussed. PacifiCorp will address these issues and PacifiCorp's proposed solutions one-by-one.

**B. Reliability: Preferential Curtailment Can Be a Meaningful Tool in Specific Circumstances.**

If direct access customers return to their incumbent utility without adequate notice, resources are constrained at the time of the direct access customer return, and the returning customers *must be served* by the utility, this can impose additional load obligations at a time of scarcity and can cause or contribute to a system emergency. Curtailment may, in some instances, help resolve or address impending system emergencies or reliability events.

Under Staff's proposed rules, a customer is subject to preferential curtailment if it is "feasible"<sup>5</sup> to curtail them and the utility does not have "excess generation" to serve them.

PacifiCorp supports the following criteria for eligibility for preferential curtailment, i.e. "feasibility":

1. The customer meets a certain size threshold. The ability to preferentially curtail customer load depends in part on the utility's system and service territory. For PacifiCorp, 25 MW is the threshold at which it believes it can reliably operationalize curtailment;
2. The customer can demonstrate that it is able to shed load in 10 minutes or less;
3. The customer elects to be preferentially curtailed.

If a direct access customer does not meet these criteria, preferential curtailment should be considered "infeasible" under the rules and should not be an option.

"Excess generation"<sup>6</sup> should be defined as generation in excess of both the utility's existing load obligations and its contractual or regulatory obligations to hold reserves (as well as any other reliability requirements that may be imposed upon it in the future).

1. "Feasibility" and "Excess Generation".

As PacifiCorp noted in the workshop, in extreme emergency situations, utilities need to take swift and significant actions to reduce load. Preferential curtailment is not helpful in such a scenario

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<sup>5</sup> Proposed OAR 860-038-0290(5) ("An electric company will not preferentially curtail non-residential direct access consumers if it is infeasible to do so or curtailment would negatively affect the electric system's reliability.").

<sup>6</sup> Proposed OAR 860-038-0290(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*." (emphasis added)).

unless there is a *meaningful* amount of load that can be shut off *quickly* and *with certainty* to help avoid a wider reliability event.

The North American Reliability Corporation (NERC) defines escalating levels of system emergencies.<sup>7</sup> As emergency levels escalate, a Balancing Authority reaches the point where it must rapidly curtail load to ensure that an emergency event does not advance to cascading blackouts and/or system failure. During such events, when a Balancing Authority is at the limits of available generation and can no longer meet its contingency reserve requirements, a utility cannot resolve the issue by getting on the phone to ask small, commercial buildings to shut down one-by-one. Instead, emergency management of the grid defaults to the Balancing Authority and its Reliability Coordinator, who implement NERC-mandated emergency plans for systematic load shedding.

To be meaningful, then, preferential curtailment needs to happen *before* a significant emergency event occurs. PacifiCorp suggests a utility should be able to curtail an early-returning direct access customer to mitigate any NERC-defined emergency event. In other words, when a utility has committed all of its generation resources to meet (1) load requirements, (2) firm transactions, and (3) reserve commitments, and is (4) concerned about sustaining its required contingency reserves, the utility should be able to curtail the direct access customer load to make resources available to avoid escalation from the existing emergency level (an EEA 1), to the next level of emergency (an EEA 2).

In addition, when load is called upon to curtail, curtailment must occur within 10 minutes or less of the notice to curtail to be useful for meeting various reliability standards and contractual commitments for sharing of contingency reserves. Ideally, from a reliability perspective, it should happen instantly. As noted above, 25 MW is the threshold at which PacifiCorp believes it can reliably operationalize this type of curtailment.

## 2. Firmness of Curtailment.

Direct access customers for which a utility has no quick or automated means of curtailment should be considered non-curtailable. Commission rules should require the departing customer to pay for the infrastructure needed for curtailment within two billing cycles of departure, and the utility should install the infrastructure reasonably necessary for curtailment as soon as practicable after the customer elects to move to direct access.

PacifiCorp has serious concerns about the viability of contractual curtailment. If the Commission is inclined to allow contractual curtailment, any such contract should strive to provide utility customers with absolute confidence that curtailment will happen within ten minutes of notice. Otherwise, contractual curtailment cannot be considered a meaningful reliability tool. The customer must be responsible for curtailing load, and there must be significant consequences for a

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<sup>7</sup> NERC, EOP-011-1 Emergency Operations Attachment 1 Energy Emergency Alerts, <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf>.

failure to comply. Any contract for curtailment should provide significant liquidated damages for breach<sup>8</sup> and should permit a utility to disconnect the customer for some period of time if the customer does not reliably comply with a notice to curtail.<sup>9</sup>

The contract should also ensure the customer is clear-eyed about the commitments required. For example, it should make clear that the customer must develop plans with the utility to make a customer contact available to the utility at all times with the authority (and the obligation) to curtail load upon notice.

3. Customers That Are Eligible for Preferential Curtailment Must Elect to Be Subject to Curtailment.

Some customers may meet the criteria for curtailment but prefer not to be curtailed. A departing direct access customer should make this election when it applies to leave the system. While PacifiCorp believes it may be appropriate for the Commission to specify in rules a list of specific types of facilities that should automatically be deemed non-curtable, the utility should not be tasked with deciding what load provides essential services or should otherwise be deemed non-curtable.

4. Direct Access Customers Should Be Exposed to Curtailment for the Duration of Their Remaining Notice Period.

If a direct access customer returns to its Provider of Last Resort without adequate notice, is eligible for preferential curtailment, and has elected preferential curtailment (in lieu of paying for a contract for capacity), that customer should be subject to curtailment for the duration of the remaining notice period (which represents the time needed to plan for them).

**C. Reliability –Effective Policies for Non-Curtable Direct Access Customers.**

All non-curtable load, whether disqualified from curtailment through eligibility or choice, must be served upon return. The unplanned return of this load can thus contribute to reliability issues during times of scarcity, particularly *in the aggregate*. Therefore, while PacifiCorp believes it is reasonable and appropriate to continue to cap all departing load, it is particularly important that non-curtable load eligible for direct access be subject to caps.

PacifiCorp proposes the following policies:

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<sup>8</sup> For example, if a customer's commercial operations earn the company \$2 million in profits per day, and damages for failure to curtail are \$100,000 per day, an economically efficient actor would choose to breach the contract rather than curtail load for a day. Any reliability or cost impacts for this failure to curtail would be passed onto other customers rather than internalized by the customer that contributed to the problem.

<sup>9</sup> In such an instance, PacifiCorp recommends the customer be required to file an application at the Commission seeking authority to be reconnected (and attesting to the company's intent to curtail upon notice going forward).

- If the Commission intends to lift or increase caps on curtailable load, strict caps should nevertheless be imposed on non-curtailable departing load.
  - Cap levels should be set during the contested case and be revisited periodically.
  - Docket UM 2143 should not be used as a basis to lift or change caps.
- If strict caps are *not* imposed on non-curtailable departing load, additional mitigation measures are needed to address reliability concerns.
  - If caps are set at levels that raise utility planning and reliability concerns (or removed altogether), additional program requirements are needed to mitigate reliability risks. In such an instance, the customer must be obligated to pay for capacity upon departure and the utility must be permitted to plan for that customer's load.
  - Under these circumstances, PacifiCorp supports Staff's proposal to require the departing customer to sign an agreement with the utility for capacity.

**D. Cost-Shifting: Preferential Curtailment Does Not Address Cost-Shifting Issues in Most Instances; Regulatory Gaps Must Be Filled.**

As PacifiCorp noted during the workshop, if resources are constrained, direct access customers return without adequate notice, and those direct access customers *must be served*, the circumstances at the time of the return may well allow the utility to manage the return without reliability issues (the concern addressed above). However, the utility may be required to purchase high-priced market power to serve the returning direct access customers (or to serve those customers with generation that could otherwise have been sold at high market prices to the benefit of existing customers). Without appropriate policies in place, this has the potential to create significant cost-shifting issues. PacifiCorp therefore provides the following comments in response to ambiguity about how cost-shifting related to Provider of Last Resort service is addressed in the draft rules.<sup>10</sup>

1. Early-returning direct access customers must accept the financial risk associated with Provider of Last Resort service upon leaving the system and remain responsible for their own costs of service upon early return.

Existing customers should not be required to subsidize early-returning direct access customers. As the Commissioners and a number of stakeholders have noted, direct access customers are sophisticated parties that should be responsible for the financial consequences of their decisions. Returning direct access customers should pay full freight for the cost of their early return.

2. Commission rules must require direct access customers returning to Provider of Last Resort service to pay for the energy (and potentially the capacity) required to serve them.

PacifiCorp would propose the following guidelines to ensure that direct access customers are

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<sup>10</sup> Proposed OAR 860-038-0290(2), (5).

responsible for the costs of their unplanned return:

- Capacity Costs. Direct access customers should provide for the unplanned capacity needed to serve them *either* through (1) participation in preferential curtailment or (2) by paying for the cost of incremental capacity (such as the capacity payment in avoided cost used to compensate qualifying facilities) needed to reliability accommodate them.<sup>11</sup>
- Energy Costs. Direct access customers should pay for unplanned energy costs needed to serve them through the greater of the incremental cost to serve them or retail energy costs (Schedule 201).
  - Incremental cost could be aligned with the Standard Offer without the thermal component and all the other market components proportionally increased to 100%.
- Duration. The duration of both these cost obligations and/or exposure to preferential curtailment should be four years. This is the notice period in PacifiCorp's current Schedule 293, which was intended to give PacifiCorp time to plan for and obtain capacity to serve the returning customer. The rules should be drafted to ensure that, once a utility begins planning for a direct access customer, that customer may not leave again for a period of time.<sup>12</sup>

As PacifiCorp noted, these represent costs of procurement upon *return*. Transition costs / consumer opt-out charges are part of a departing customer's obligation to existing customers upon *departure* and are conceptually separate from obligations proposed here, which address issues that arise upon direct access customers' return in violation of their notice obligations.

#### **E. Utility Regulatory and Legal Compliance Issues.**

Finally, PacifiCorp would note that the return of direct access customers should not cause or contribute to a utility's violation of its legal, contractual, or compliance obligations. PacifiCorp notes these issues in its informal comments before the workshop and will repeat them here.

- *NERC/WECC obligations*. A utility is required to keep certain reserves held for emergency use under NERC standards. No reserves held for compliance with reliability standards should be deemed "excess." The Commission would appear to have no authority to waive NERC/WECC reliability requirements.

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<sup>11</sup> As noted above, depending on the cap level, a departing customer may need to sign a contract for capacity with the utility upon *leaving the system* to address issues associated with an unplanned return to its Provider of Last Resort.

<sup>12</sup> PacifiCorp would also recommend the Commission entertain no request for changes to existing caps until ESSs have demonstrated they are resource adequate (i.e. have engaged in good resource planning); the Commission has fully implemented mitigation measures for Provider of Last Resort risks; and cost-shifting issues (including non-bypassability) have been resolved and new rules implemented.

- Preferential curtailment, when it is feasible, may help a utility meet these obligations.
- By contrast, a requirement to serve non-curtable direct access customers may increase the likelihood that an emergency requiring use of reliability reserves will occur.
- *Contractual obligations.* A utility may have holdback obligations related to sharing agreements with other utilities for reliability issues. These agreements generally lower the overall cost of compliance and are legally binding, and their associated holdback should not be considered “excess.” Noncompliance can lead to penalties and reliability issues. Examples:
  - Northwest Power Pool contingency reserve program. Utilities across the northwest agree to hold certain reserves as a group, which increases reliability and lowers the overall cost of compliance. A utility like PacifiCorp participating in the program can call upon other utilities for help when PacifiCorp is in need but must also commit to holdback to share with other utilities when they are in need. These contractual reserves held for program participation should not be considered excess.
  - Western Resource Adequacy Program. If it becomes operational, an entity participating in the Western Resource Adequacy Program will have obligations related to resource adequacy forward showing requirements and holdback requirements for the operational program. The resources needed to meet these program requirements serve a specific reliability purpose, participating entities will be subject to penalty for noncompliance, and the Commission would not appear to have authority to waive them.
  - Preferential curtailment, when it is feasible, may help a utility meet these types of obligations, so long as a utility can treat the direct access customer's load as available holdback. For example, if a reliability program requires PacifiCorp to deliver power to another reliability program participant, and PacifiCorp does not have and cannot procure energy in excess of its (load, regulatory, and contractual) requirements, PacifiCorp could curtail an eligible direct access customer's load to serve that program participant.
  - A requirement to serve non-curtable direct access customers that have returned without notice, by contrast, will only increase costs and reliability issues.
- *HB 2021 requirements.* HB 2021 includes a number of ambitious clean energy targets. A significant number of direct access customers returning to the system without adequate notice can create compliance issues. HB 2021 allows the Commission to temporarily waive a utility's HB 2021 compliance through a “reliability pause.” As a matter of public policy, PacifiCorp believes the Commission should not design direct access programs or Provider of Last Resort obligations that could cause or contribute to the need for a “reliability pause” for clean energy goals. If they do, however, such a “pause” should be granted. Preferential curtailment does not mitigate this issue.



- *Integrated Resource Plan/Request for Proposals*. If a significant volume of direct access load returns unexpectedly from customers who are not curtailable, a utility may need to acquire resources as quickly as possible. Commission rules should recognize this and provide for waiver of Request for Proposal obligations and facilitate a method for timely acquisition of and cost recovery for new resources needed to meet direct access load.

As the Commission considers requests to loosen direct access requirements, these considerations should be relevant.<sup>13</sup>

**F. It Is Critical—Not Superfluous—for Commission Rules to Address Scenarios Involving Significant Market Disruption.**

As PacifiCorp noted in its pre-workshop comments, PacifiCorp understands that some stakeholders are interested in drafting rules that address the most common, day-to-day, market scenarios. The fact is, however, that energy markets have faced significant upheaval many times in recent decades and are likely to experience them again. A rapid migration of direct access customers to their Provider of Last Resort during times of market scarcity can create significant costs, and can cause or contribute to reliability issues. Additionally, the resulting financial chaos can result in *significant, persistent cost burdens* that last well beyond the event itself. The fact that some stakeholders are advocating for a direct access policy that would voluntarily open the door to this type of risk and impose it on existing customers is very concerning to PacifiCorp.

It is necessary for Commission rules to address cost and reliability issues in the edge case. The Commission—like any state utility regulatory commission—has long recognized that a utility will face both scenario and stochastic risks. Utility regulatory policy can and must address both. Direct access customers—not Cost of Service customers—must be responsible for the cost and reliability risk associated with their unplanned return—whether that means a single direct access customer returning by choice, or a wave of direct access customers returning due to significant and persistent market events.

The inclination of some stakeholders to downplay and dismiss a scenario involving rapid customer return to their Provider of Last Resort during a time of persistent resource constraints is problematic. Utilities are required to plan for “unlikely” but potentially devastating events every day, and the Commission is tasked with allocating responsibility in such events (and for managing the fallout when they do). The statement that “*significant market disruption is unlikely*” is first and foremost a prediction. Direct access customers, not remaining Cost of Service customers, should be required to bear the risks of that prediction.

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<sup>13</sup> While ESSs may also be required to comply with some of these requirements, they do not have a regulatory obligation to serve. If service becomes unprofitable for an ESS, it can stop providing service in Oregon. By contrast, if it becomes unprofitable for a regulated utility to provide service, the utility must keep providing service. The costs associated with that service, whether palatable or unpalatable, must be allocated somewhere through regulatory policy.

PacifiCorp looks forward to engaging further on these issues.

Sincerely,



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