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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 Report for Commission's October 4, 2022, Public Meeting.

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) submits these comments in response to Staff's report and proposed Division 38 rules for direct access filed in advance of the Public Utility Commission of Oregon's (Commission) October 4, 2022, Public Meeting. PacifiCorp previously filed comments on its key issues on September 15, 2022. PacifiCorp relies on that set of comments to articulate its position on various of Staff's proposed rules. These comments are intended to provide additional detail on PacifiCorp's key concern at this juncture: the underdevelopment of rules addressing provider-of-last resort (POLR).

While PacifiCorp appreciates the extensive work that Staff and other stakeholders have conducted thus far in preparing these draft rules, the Company remains concerned that Staff's proposal to address concerns relating to utilities' POLR obligations is significantly underdeveloped. POLR issues are one of the most problematic and meaningful issues to address from a regulatory perspective in the context of partial deregulation. Aside from caps, which PacifiCorp addressed in its September 15 comments, the primary tool that seems intended to address POLR concerns appears to be preferential curtailment.

PacifiCorp is aware of no other jurisdiction that has attempted to address POLR concerns through a policy of preferential curtailment. While PacifiCorp has not done a search of every jurisdiction, PacifiCorp has provided detail about extensive discussions currently ongoing in California. Two observations about the California rulemaking are noteworthy: first, California is conducting a multi-year rulemaking proceeding specifically focused on POLR issues; by contrast, Oregon has not devoted a single workshop to Staff's straw proposal or to POLR issues in general.[1] Second, although the stakeholders in the California rulemaking have created an extensive list of potential

[1] While Staff initially proposed preferential curtailment in early workshops, the issue was dropped when it became clear that consensus on the issue would not be forthcoming; no workshop has been devoted to POLR issues specifically or to entertain alternative proposals for addressing POLR issues.

POLR solutions, preferential curtailment does not appear to be one of them; by contrast, in Oregon, preferential curtailment appears to be the other tool, aside from caps, that Staff appears interested in entertaining.

PacifiCorp continues to believe that a regulatory policy that cuts off Oregon citizens from access to power as a solution to the POLR issues is suboptimal state regulatory policy. Aside from that, the draft rules themselves remain unclear and incapable of implementation as written.[2] For these reasons, PacifiCorp believes the Commission should refrain from opening a Notice of Proposed Rulemaking (NOPR) and should instead direct Staff to continue the informal rulemaking process in this docket. If the Commission elects to move forward with the NOPR, the Commission should make clear that it expects further development of direct access rules at some point in time after the conclusion of the contested case proceeding (Docket UM 2024).

A. Preferential Curtailment Is Unlikely to Solve POLR Issues; Moreover, the Rules as Drafted Are Likely to Undermine the Resolution of Facts in the Contested Case Proceeding.

Using preferential curtailment as a front-line tool for protecting cost-of-service customers from the risks associated with a utility's POLR obligation represents, in PacifiCorp's view, poor regulatory policy. One of this Commission's primary duties is to ensure the availability of electric service to customers at fair and reasonable rates.[3] While PacifiCorp agrees that it is appropriate for returning direct access customers to endure exposure to market pricing for some period of time as a result of their unplanned return, this policy is strikingly different in kind from a state commission policy that requires no electric service at all.

A review of the characteristics of PacifiCorp's direct access customers adds some context to such a policy. The broad categories of direct access customers in PacifiCorp's service territory include hospitals, education facilities, and housing. Even at this high level of detail, it seems evident that a policy that cuts off electricity for these customers as a first-line policy choice would represent a regulatory failure.

Even if preferential curtailment is used as an additive, rather than primary, tool to protect against POLR risk, Staff's straw proposal needs further discussion and refinement before it can be operational. Because the straw proposal was not vetted in workshops, the implementation details are ambiguous and would benefit from further discussion. A few examples are provided below.

B. The Preferential Curtailment Proposal Is Ambiguous and Requires Further Discussion and Development.

In the Company's September 15 comments, PacifiCorp raised its concerns that several terms in Staff's proposed preferential curtailment rules were undefined and that Staff's intended

[2] PacifiCorp raised in its prior comments concerns regarding other provisions of Staff's proposal. The Company continues to believe that other provisions require additional clarity, but is particularly concerned with Staff's preferential curtailment rules and seeks to raise these concerns for the Commission's review.
[3] ORS 756.040(1).

implementation of these rules is unclear.[4] In its report for the Commission's Public Meeting, Staff acknowledges PacifiCorp's concerns but states that these concerns could be best addressed in a contested case after adoption of the "general policy framework" outlined in Staff's proposed rules.[5] PacifiCorp disagrees with this statement for a number of reasons. First, one intended goal of the draft rules appears to be to provide guidance for the contested case proceeding. Adopting ambiguous, general rules does not provide clarity for the contested case proceeding. Moreover, adopting rules with the intent of clarifying ambiguity in subsequent cases presupposes the validity of the proposed framework without first assessing the viability or potential consequences of the proposal. In any event, the rules are sufficiently ambiguous that PacifiCorp does not believe they are implementable as written.

1. "Excess Generation" Must Be Defined.

Under Staff's proposed rules, preferential curtailment would only be available when energy is not available on the market and when the utility does not have excess generation capacity to serve returning customers.[6] Presumably, this mean that utilities should first use any *excess* generation to serve returning direct access customers. The draft rules do not define "excess generation"; nor do they explain why direct access customers—who should not be placing a burden on the utility's customers or requiring unwarranted cost-shifting—should be entitled upon unexpected return to gain access to generation that was planned for existing customers and is likely to be providing them with significant value. The definition of "excess generation" is thus critical for rule implementation.

The definition of "excess" is meaningful in this context. Utilities hold generation capacity beyond what is strictly necessary to serve customers' load for any number of important reasons. Once the term is defined, the consequences of implementation—whatever they may be—will become clear and can be meaningfully discussed.

Generation in excess of a utility's immediate load service needs can be necessary for any of the following reasons:

- The generation could be needed for reliability purposes;
- The generation could be needed for reserve requirements;
- The generation could be needed to meet RPS standards or any other legal or regulatory requirements as measured against *existing customer load*;
- The generation could be serving a role as a valuable hedge against high market prices in times of market scarcity; or
- Some other need.

Thus, the term "excess" should be defined in terms of "in excess of what?" In order to ensure no

[4] PacifiCorp's Comments on Staff's AR 651 Division 38 Direct Access Regulation Straw Proposal at 2-5 (Sept. 15, 2022).
[5] Staff Report Re: Staff's Revised Recommendation to Move the Direct Access Rulemaking to the Formal Stage at 6 (Sept. 26, 2022) [hereinafter "Staff Report"].
[6] *Proposed* OAR 860-038-0290(2).

unwarranted cost shifting occurs, PacifiCorp believes the term should mean "in excess of energy that would otherwise be valuable to remaining customers," but it should in any event be defined.

In short, the proposed rule cannot be implemented, nor its consequences understood, without a definition of "excess."

2. "Infeasibility" Should Be Defined, and Implementation Details Included in the Draft Rules.

Under Staff's draft rules, a utility unable to serve a customer on emergency default service may preferentially curtail the returning customer unless doing so is "infeasible" or "would negatively affect the electric system's reliability."[7] At a minimum, the term "infeasible" should be defined and implementation details provided.

It is unclear from the straw proposal whether the term "infeasible" refers to a customer that it is infeasible to curtail because: (1) the customer *should not be* curtailed because of the public policy ramifications (hospital, emergency service provider, etc.), (2) it is physically impossible to preferentially curtail the customer, or (3) the cost of added facilities needed to preferentially curtail the customer is deemed too high based on some unspecified standard.

It is also unclear when this assessment would be made, what criteria would govern the assessment, what process would be used for this assessment, and, if preferential curtailment is deemed "feasible," when and how the departing customers should be required to pay for facilities needed to implement preferential curtailment.

It would seem important to discuss these details and other details[8] before draft rules are advanced to the formal rulemaking phase. Resolution of this issue would also appear important for the contested case phase. If it is "infeasible" to curtail most customers, the limited POLR protections provided by a policy of preferential curtailment become even further diminished. An understanding of the scope of the policy's "infeasibility" would thus presumably be helpful for establishing facts about risk in the contested case phase.

3. Planning for Individual Returning Customers Should Be Better Explained.

Under Staff's proposed rules, if a utility does not implement preferential curtailment, the utility would be required to "plan for and acquire capacity to account for a direct access consumer's potential return to the electric company's service."[9] However, Staff has not defined how this tariff will be implemented. It is unclear whether the utility should plan for additional system resources, or to make specific acquisitions to be used for (and allocated to) specific customers. Either way, the details of this planning, acquisition, and pass-through cost should be better defined.

[7] *Proposed* OAR 860-038-0290(5).
[8] Such as, how long would a returning customer be subject to preferential curtailment?
[9] *Proposed* OAR 860-038-0290(5)(a).

C. Conclusion

PacifiCorp does not believe that preferential curtailment can or should provide a first-line regulatory policy for mitigation of POLR risk. Nevertheless, if the Commission seeks to move forward with such a policy, PacifiCorp simply believes it would be preferable to better define the rules before entering the formal rulemaking process. Although the proposed preferential curtailment provisions are phrased simply, the topic is complex to address and could add a significant administrative burden to utilities, direct access customers, and the Commission. As written, the preferential curtailment provisions are likely to spur additional disputes and issues unless there is mutual understanding about their definitions and implementation details.

For these reasons, PacifiCorp asks that the Commission reject Staff's proposal to issue a Notice of Proposed Rulemaking and instead to provide guidance to continue improving these proposals in the informal rulemaking process.

Sincerely,

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