BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 651

In the Matter of Rulemaking Regarding Direct Access Including 2021 HB 2021 Requirements.	)	COMMENTS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS

I. INTRODUCTION

The Alliance of Western Energy Consumers ("AWEC") submits the following comments in the above-referenced docket regarding the Provider of Last Resort ("POLR") and preferential curtailment rules, as requested by Staff during the November 2, 2022 workshop. Specifically, AWEC addresses the comments circulated by PacifiCorp prior to the November 2nd workshop which set forth preferential curtailment and POLR suggestions in order to "remedy[] some limitations and/or ambiguity in the current draft preferential curtailment provisions."[1] AWEC believes that, with some modifications, PacifiCorp's proposal may provide a compromise resolution to these issues.

II. COMMENTS

In comments to stakeholders prior to the November 2, 2022 workshop, PacifiCorp proposed a new framework for POLR and preferential curtailment. This framework would

[1] PacifiCorp Initial Comments re Provider of Last Resort and Preferential Curtailment, at 1 (Nov. 2, 2022) ("PacifiCorp Comments").

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242

establish two categories of DA customers, those that are "curtailable" and those that are "non-curtailable." Curtailable customers would be those that are 25 MW or larger and can shed load in 10 minutes or less. Non-curtailable customers would be any customers that do not meet these criteria, emergency responders, or any curtailable customer that nevertheless chooses not to be curtailed. Non-curtailable customers would be subject to capacity and energy charges based on the cost of the incremental capacity and energy required to serve them if they return on less than the notice required to return to cost of service. These charges would only be incurred at the time the customer returns, not while they are taking DA service. PacifiCorp also proposed a cap with a to-be-determined size on non-curtailable customers to mitigate potential reliability issues in the event that all or a large portion of these customers returned to emergency service together. AWEC appreciates PacifiCorp's efforts on this issue, and AWEC's comments below address the framework PacifiCorp proposes as an alternative to the framework currently in the draft rules.

A. AWEC supports creating categories of curtailable and non-curtailable load, but how those categories are defined should be determined in the contested case proceeding

PacifiCorp proposes that, for a direct access ("DA") customer to be considered "curtailable," it "should meet the following two criteria: [t]he customer meets a certain size threshold [proposed at 25 MW or larger]…and [t]he customer can demonstrate that it is able to shed load in 10 minutes or less."[2] As such, non-curtailable load is defined as load that is less than 25 MW, or cannot shed load in less than 10 minutes. PacifiCorp further proposes that non-

[2] *Id.* at 2.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242

curtailable load include "(1) emergency providers and/or first responders; and (2) any customer that simply elects not to be curtailed."[3]

AWEC agrees that it is reasonable to create two buckets for curtailable and non-curtailable load, and further agrees that emergency providers and those customers that do not want to self-curtail should constitute non-curtailable load. Additionally, although defining curtailable and non-curtailable load based on a size threshold and timing requirements may be reasonable, the 25 MW threshold and 10-minute load shedding requirements proposed by PacifiCorp warrant further investigation and justification. For instance, PacifiCorp already has a Large Customer Curtailment Option under Schedule 73 that allows customers over 4 MW to voluntarily curtail load in exchange for being excluded from scheduled rotating outages. PacifiCorp and PGE also have demand response programs that require load shedding of far less than 25 MW.[4] If these programs can provide value to utilities, it is not immediately obvious why a higher threshold should apply to DA customers in a reliability situation. Load curtailment provides an economically efficient alternative to a requirement that utilities carry duplicative capacity resources that would rarely or never be used to serve DA load. Thus, size and notice thresholds should be data driven and designed to be as inclusive as possible while still achieving reliability objectives.

PacifiCorp does not sufficiently address this issue in its comments other than stating that "25 MW is the threshold at which PacifiCorp is currently able to reliably operationalize curtailment."[5] At this time, Staff and stakeholders do not have the benefit of understanding any

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3 *Id.*
4 PacifiCorp Schedule 106; PGE Schedule 26.
5 PacifiCorp Comments at 2.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242

operational or other considerations that would provide a basis for setting the same or a different threshold for PGE. AWEC therefore recommends that the specifics for what constitutes curtailable and non-curtailable load be determined in the contested case proceeding wherein a decision may be made based on evidence in the record and findings of fact.

B. PacifiCorp's capacity backstop charge proposal should be adopted

AWEC agrees with PacifiCorp that DA customers "are sophisticated parties that should be responsible for the financial consequences of their own decisions."[6] As such, to prevent unwarranted cost-shifting, PacifiCorp proposes that DA customers "provide for the unplanned capacity needed to serve them through either preferential curtailment or the cost of incremental capacity (such as the capacity payment in avoided cost used to compensate qualifying facilities)."[7] Regarding energy, PacifiCorp proposes that DA customers "pay for unplanned energy costs through the greater of the incremental cost to serve them or retail energy costs."[8] These charges would be incurred for a four-year period, corresponding to the notice period DA customers have to return to cost-of-service under normal circumstances pursuant to PacifiCorp's current tariff. PacifiCorp's comments make it clear that both of these charges would only be incurred by the DA customer "upon *return*."[9]

AWEC agrees that a capacity backstop charge, calculated as described by PacifiCorp, and which is triggered *only* when a DA customer returns to the utility's service on less than the notice required to return to cost of service and when the transition adjustment rates have

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6 *Id.* at 3.
7 *Id.*
8 *Id.*
9 *Id.*

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242

lapsed, is reasonable. However, the current draft preferential curtailment provision OAR 860-038-0290(5)(a) states that "[w]here an electric company will not enact preferential curtailment, the electric company will plan for and acquire capacity to account for a direct access consumer's potential return to the electric company's service."

Based on this language and statements made during the November 2nd workshop, it is AWEC understanding that some parties continue to support the proposal that DA customers be subject to a capacity charge associated with their *potential* return to service – that is, this charge would apply even when the customer is taking DA service. AWEC has consistently opposed this concept, and continues to do so, as it violates both the DA law by requiring DA customers to pay for utility resources,[10] and principles of cost causation, requiring DA customers to pay for resources from which they receive no benefit. Further, such a capacity charge could lead the POLR to acquire economically inefficient and duplicative resources.

As PacifiCorp's comments demonstrate, a charge that applies only to DA customers who return to service on less than the time required to return to cost of service is a reasonable, compromise solution. This backstop capacity charge combined with a DA customer's responsibility for incremental costs needed to serve them will ensure that there is no cost-shifting from DA customers onto cost of service customers. AWEC notes that the duration in which the charge applies to a DA customer may need to be determined in the contested case phase.

[10] ORS 757.601(1) (requiring that all non-residential customers of an electric company be allowed direct access). "Direct access" is defined as "the ability of a retail electricity consumer to purchase electricity and certain ancillary services … directly from an entity other than the distribution utility." ORS 757.600(6). Imposing a capacity backstop charge on DA customers while they are on DA service would deny these customers the "ability" to purchase "electricity and certain ancillary services … from an entity other than the distribution utility."

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242

PacifiCorp proposes four years because this aligns with the notice period DA customers must provide to return to cost-of-service under its current tariff. However, PGE customers are only required to provide three years of notice. It may be that during the contested case phase, the Commission chooses to align these notice periods between the utilities or adopt new ones. Regardless, AWEC generally agrees that the duration of the backstop charges should correspond with the notice period to return to cost of service rates applied to each utility.

C. Contractual curtailment continues to be a reasonable solution for curtailable customers

Concerns related to preferential curtailment, specifically reliability and cost concerns may be resolved through the implementation of contractual curtailment, rather than physical curtailment. Under a contractual curtailment structure, DA customers would be contractually obligated to self-curtail in the event of market failure or face financial penalties. While AWEC recommends that the amount of these penalties be determined in the contested case phase, they should be high enough to incentivize the customer to curtail. Contractual curtailment provides a reasonable alternative to physical curtailment that avoids the potential expense associated with installing infrastructure to enable physical curtailment and, therefore, is an economically preferred option.

D. The size of the cap on non-curtailable customers should be determined in the contested case proceeding

PacifiCorp proposes that all non-curtailable load be subject to caps to mitigate potential reliability concerns if all non-curtailable load returns to utility service on an emergency basis. PacifiCorp recommends that such levels be set during the contested case proceeding. By distinguishing between curtailable and non-curtailable load in terms of the application of a DA cap

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242

and providing a rationale for a cap on non-curtailable load, PacifiCorp has articulated a reasonable basis for the implementation of a cap on a portion of the DA program. AWEC, therefore, supports PacifiCorp's proposal and agrees that the size of the cap on non-curtailable load be determined in the contested case phase. That said, the amount of the cap on non-curtailable load should be no lower than the amount of existing non-curtailable load in each utility's Long-Term Direct Access program. AWEC continues to support removal of any cap on curtailable load, as these customers present no POLR and reliability risk to the utility.

E. The preferential curtailment portion of the draft rules should not be implemented until after the conclusion of the contested case in UM 2024.

If the changes to preferential curtailment in the draft rules, as proposed by PacifiCorp and framed in these comments, is adopted, they will provide helpful structure and guidance for the contested case phase. However, several aspects of the preferential curtailment rules will remain to be resolved, including the definition of "curtailable" and "non-curtailable" customers and the size of the cap on non-curtailable customers. Furthermore, if these new requirements are to apply to existing long-term direct access customers, these customers deserve to have sufficient notice of these new requirements and time to fully evaluate their options.

As the current caps on the utilities' long-term direct access programs will remain intact during the pendency of the contested case process, there is no compelling reason to implement preferential curtailment rules before this process has concluded. Accordingly, AWEC recommends that the draft rules on preferential curtailment be modified as described in these comments, but that the Commission also make clear that this portion of the new rules will take effect at a later date.

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1750 SW Harbor Way, Suite 450
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III. CONCLUSION

AWEC appreciates the opportunity to comment on the POLR and preferential curtailment rules and looks forward to continuing to work with stakeholders to this docket to reach a compromise resolution.

Dated this 18th day of November, 2022.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple
Tyler C. Pepple
Corinne O. Milinovich
1750 SW Harbor Way, Suite 450
Portland, Oregon 97201
(503) 241-7242 (phone)
(503) 241-8160 (facsimile)
tcp@dvclaw.com
com@dvclaw.com
Of Attorneys for the
Alliance of Western Energy Consumers