

April 21, 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) appreciates the opportunity to comment on the Public Utility Commission of Oregon (Commission) Staff’s draft rule revisions. Generally speaking, PacifiCorp believes Staff’s proposed revisions are consistent with key statutory and public policy considerations related to the continuation of direct access and represent a good starting point for a formal rulemaking.

PacifiCorp is mindful of the fact that a number of key direct-access issues will be deferred for resolution in the contested case phase of the proceeding, but PacifiCorp agrees that this staging is appropriate and recommends moving forward with Staff’s draft rules.

Non-bypassable Charges

Staff’s draft rule revisions include a new definition for Non-bypassable Charges.¹

PacifiCorp largely agrees with the proposed definition and the approach, so long as the definition is interpreted as broad enough to include federal obligations, in addition to state obligations, and so long as it is interpreted to include costs associated with historical stranded cost obligations such as coal plant decommissioning. The state of Oregon determined that coal plants were a least cost, least risk resource and utilities invested in them on behalf of all customers. These historical collective obligations should not be avoided by virtue of timing issues associated with time-limited transition or customer opt out charges.

Staff proposes in the draft rules that Non-bypassable Charges be allocated “as determined by the Commission.”² PacifiCorp believes this is an appropriate option that will allow the Commission to determine, on a case-by-case basis, the most appropriate allocation methodology for a particular charge. Staff notes that it is considering alternative language that would allocate non-bypassable charges to a direct access customer in the same method as a cost-of-service customer of similar size and load profile. PacifiCorp agrees this is a supportable default cost allocation methodology and would support such language, so long as the rule allows for exceptions. The Commission may wish in certain instances to apply an alternative methodology,

¹ Staff’s Proposed Division 38 Rule Language at 18-19 (Mar. 23, 2022).

² *Id.* at 19.

and legislation may mandate a specific cost allocation methodology that would displace this default allocation method.

PacifiCorp understands that the current list of non-bypassable charges will be determined in the contested case phase of docket UM 2024.³ PacifiCorp agrees with this approach.

Default Supply

Staff did not alter OAR 860-038-0280 regarding Default Supply. Staff concludes that it is duplicative to require Electric Service Suppliers (ESSs) to participate in a resource adequacy program while simultaneously charging direct access customers for backstop capacity.⁴

PacifiCorp is not necessarily advocating for backstop capacity charges but would note that the existence of a successful resource adequacy program does not eliminate concerns about provider-of-last-resort (POLR) risk. While resource adequacy is one element of a long-term solution to direct access customers leaning on the incumbent utilities, it does not solve all POLR issues, particularly if the Commission allows significant load migration. Resource adequacy simply serves to ensure the region as a whole is planning for an adequate regional reserve margin under normal conditions.

But POLR issues also arise when an ESS can no longer serve a customer, or when a customer of an ESS fails to pay its bills. Even with an effective resource adequacy program, any number of circumstances can create a shortfall of system capacity that drives up prices and creates an unplanned customer migration event. The potential impact on ratepayers and cost shifting implications of unplanned customer migration can be significant. If multiple ESSs were to fail or decline to provide service to direct access customers for one reason or another, a history of adequate resource adequacy investments would not necessarily ensure a POLR could reasonably meet system reliability needs or ensure uninterrupted service for returning customers. For this reason, the state of California, which has a resource adequacy program, is currently investigating its POLR requirements to fill the gaps in its current regulatory framework.⁵

When an ESS fails, it also is at high risk of default on contracts for new construction, which could create additional shortfalls and further market instability.

In short, PacifiCorp strongly supports efforts to ensure the region is resource adequate, but resource adequacy does not create a framework that mitigates all POLR risk, and certainly does not mitigate the most problematic POLR risk. Thus, while PacifiCorp is not currently advocating for a backstop capacity charge, PacifiCorp would simply note that resource adequacy requirements do not solve all capacity issues for POLRs.

³ *Id.* at 1.

⁴ *Id.*

⁵ *Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort*, California Public Utilities Commission, Docket No. R.21-03-011 (Mar. 18, 2021) *hereinafter* “CPUC Order Instituting POLR Rulemaking.”

ESS Disclosure, Labeling, and Reporting Requirements.

Staff added ESS disclosure requirements to OAR 860-038-0300 to address Electric Company and ESS Labeling Requirements.⁶ Staff also added OAR 860-038-0405 to address ESS Emissions Planning Reports.⁷ PacifiCorp does not have significant concerns about the ESS reporting and regulatory framework proposed by Staff. PacifiCorp would submit that one additional area of reporting may be necessary. To the extent ESSs are required by law to collect money from their customers based on a percentage of ESS revenues and remit those funds to the utilities (as is currently the case with the public purpose charge), the Commission should implement reporting requirements that ensure the Commission, rather than utilities, exercise appropriate oversight over ESS compliance with such requirements.

Other Issues

Staff proposes deferring the issue of caps to the contested case proceeding, docket UM 2024.⁸ The draft rules thus defer any discussion of the criteria that would be used to set caps.

PacifiCorp believes this procedural route is appropriate, as the issue of caps has not been the subject of meaningful exploration, despite its critical role in ensuring reliability and avoiding unwarranted cost shifting. The contested case will provide a meaningful opportunity for stakeholder input on any proposed criteria and allow for Commission guidance after factual exploration of the issue.

PacifiCorp would reiterate the importance of caps for removing risk in general. Many direct access program flaws or unintended consequences can be dealt with effectively when a limited amount of load defects from the system. However, the larger the amount of load that leaves the system, the more significant flaws in the program design could be, including potential POLR risk.

Staff notes that caps should be recalculated annually or at an interval chosen by the Commission to address load growth (including behind-the-meter) and ongoing risks. PacifiCorp agrees that caps may need to be revisited as systems and the industry change but would observe that litigation of ongoing risks is likely to be a contentious issue that imposes a significant administrative burden on parties and the Commission, with the Commission obligated to ensure no unwarranted cost shifting will occur due to direct access. PacifiCorp thus recommends careful consideration of how frequently to revisit a cap. For example, a rule might allow a party to petition to reopen a cap after a specific number of years.

Preferential Curtailment

Staff's draft rules do not include a provision for preferential curtailment, but Staff's note

⁶ Staff's Proposed Division 38 Rule Language at 1, 45.

⁷ *Id.* at 1, 39-40.

⁸ *Id.* at 1.

suggests the issue may be raised again at some point. PacifiCorp would reiterate its position that preferential curtailment is neither a meaningful solution to the POLR problem nor good public policy. First, customers that come back to the utility on emergency supply service can only be on that service for five business days. After that, they are moved to cost of service rates. Preferential curtailment for customers over a five-day period is not a meaningful policy solution to POLR risk. Second, as PGE noted in a prior workshop, there is a cost associated with technical implementation of a feasible preferential curtailment policy. Finally, PacifiCorp believes that as a matter of public policy, the state of Oregon should do its best to ensure that all customers, including its large customers, are able to count on reliable electric service in the state, particularly when the Commission has authority to do so.

Conclusion

In summary, PacifiCorp agrees that Staff's proposed rules are a good starting point for the formal rulemaking process. Moving forward, PacifiCorp believes it will be important to recognize the centrality of caps to adequate mitigation of POLR risk. As direct access rules and policies are revisited, mechanisms should be in place to ensure system reliability needs and state decarbonization goals are met, and that costs associated with customer migration are fairly allocated.

Informal inquiries regarding this filing may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

A handwritten signature in blue ink that reads "Shelley McCoy". The signature is written in a cursive, flowing style.

Shelley McCoy
Director, Regulation